

1028
COLLECTION OF CASES

ON THE

ANNUITY ACT,

WITH

An Epitome of the Practice

RELATIVE TO

The Enrolment of Memorials.

By WILLIAM HUNT, Esq. A.M.

OF LINCOLN'S INN, BARRISTER AT LAW,
FELLOW OF KING'S COLLEGE, CAMBRIDGE,
EDITOR OF THE LAST EDITION OF LORD CHIEF BARON
GILBERT'S LAW OF DISTRESSES & REPLEVIN.

THE SECOND EDITION.

Plurium in unum confervo inventa, ubicunque ingenio non erit locus,
curæ testimonium meruisse contentus.

QUINTIL. Inst. Orator. lib. 3, cap. 1.

BIRMINGHAM,
PRINTED BY T. PEARSON,
FOR W. CLARKE & SON,
PORTUGAL STREET, LINCOLN'S INN, LONDON,
AND SOLD BY T. PEARSON.

MDCCXCVI.



TO THE

RIGHT HONORABLE

ALEXANDER LORD LOUGHBOROUGH,

BARON LOUGHBOROUGH,

OF LOUGHBOROUGH, IN THE COUNTY OF SURREY,

LORD HIGH CHANCELLOR

OF

GREAT BRITAIN,

THIS WORK

IS,

WITH HIS LORDSHIP'S PERMISSION,

MOST RESPECTFULLY DEDICATED.

THE
DEDICATION.

MY LORD,

THOSE who are acquainted with the beneficial effects of the Act of Parliament which has furnished the subject of the following pages, will not inquire into the reason of my anxiety to introduce them under the protection of your Lordship's name. They already know, for many of them have felt by experience how much the public is indebted to your Lordship for the suggestion and support of that salutary Act; and were they even ignorant of this their more particular

A 3 obligation,

obligation, yet would the general fame of your Lordship's abilities afford a prompt conviction of the propriety of this Address.---- Happy were it for me, and for the character of this little work, if your Lordship could be as easily persuaded, either that my efforts have not been exerted without success, or that your Lordship's patronage has not been bestowed without sufficient consideration.

I am,

MY LORD,

Your Lordship's obliged,

obedient, and devoted Servant,

WM. HUNT.

EDGBASTON,
Near Birmingham, Warwickshire,
MAY 2, 1796. }

THE

PREFACE

To the SECOND EDITION.

THIS work is considerably enlarged by the insertion of a variety of cases, which have arisen upon the Annuity Act since the first edition was published. Those cases which in that edition did not immediately apply to the act, of which this collection professes solely to treat, are here omitted, because now, owing to the great increase of matter, they would unnecessarily have swollen this volume, which is intended merely for the practitioner's vade mecum: whether those cases will appear hereafter, depends entirely upon my finding leisure to pursue the subject of annuities in all those branches, over which Courts of Law and Equity have any jurisdiction. However, as a work

A 4

of

of this sort still continues to be a *desideratum* in legal publications, I was unwilling to delay this practical treatise till that event took place; more especially as the frequent discussion of this part of the subject, and the strict hand Courts of Justice hold over transactions of this nature, makes it necessary for the practitioner to be very careful and exact in adopting the interpretation which this act has there received, because the validity of every annuity within it, absolutely depends on a perfect compliance with the solemnities prescribed thereby; and that too according to the exposition of those Courts.

This edition contains not only all the printed cases up to Hilary Term, 36 *Geo.* 3, inclusive, but they are digested and arranged together with several manuscript cases, which till now were never published; and many points are interspersed, which do not appear in the printed reports of the same cases; perhaps because they came incidentally only before the Courts: those cases are distinguished by the letters MSS. and were taken by myself or friends for the express purpose to which they are now applied. The subject is also somewhat newly arranged, and the Epitome

Epitome of the Practice is rendered much more complete, in as much as it now contains *every* thing necessary to be known for the drawing and enregistering a memorial. The forms of memorials are entirely new, but I have not added any precedents for the grants of annuities, with memorials adapted to them, because my intention is, merely to facilitate the duty of the practitioner, by enabling him to find in a single volume all the useful information to be derived from the cases upon this statute; and I am not aware that any thing material is omitted: indeed useful information is all that can be expected from a work of this nature, which, excepting the methodical arrangement, and a few comments of my own, is a mere compilation and collection; however, if the cases are digested in a plain, useful, and intelligible manner, I hope that circumstance will not derogate from this publication; for which, if any apology is necessary, it may perhaps be thought a sufficient one, to add, that for want of a more general and accurate knowledge of the useful information contained in those cases, it happens in almost every Term, that the Courts are obliged to set aside some annuity deeds, although the contracts

contracts between the parties may have been strictly fair and honourable, merely because the memorials are not drawn and enrolled with that precision and accuracy which this act of parliament requires. So that in proportion as the instances increase, in which its restrictions are seen to operate, its utility is more universally acknowledged, and those restrictions ought to be made more universally known.

EDGBASTON,
Near Birmingham, Warwickshire,
MAY 2, 1796.

CONTENTS.

<i>INTRODUCTORY Chapter</i>	<i>Page</i>
<i>The Annuity Act, viz. 17 Geo. 3, c. 26</i>	7

CHAP. I.

SECT. I. <i>When the Annuity Act took effect</i>	16
— II. <i>What are such deeds, &c. As ought to be enrolled</i>	— — 24
— III. <i>Of the enrolment of the date of the deeds</i>	50
— IV. <i>Of the time allowed after the execution of the deeds, &c. before enrolment</i>	— 58
— V. <i>Of describing and setting forth the consideration in the memorial</i>	— 63, 346
— VI. <i>Of stating the trusts and interests of the parties</i>	— — 138
— VII. <i>Of a mistake in the memorial as registered</i>	— — 156, 351
— VIII. <i>What is considered as returning part of the consideration-money to the person advancing</i>	

*advancing the same, or retaining it on a pre-
tence within the meaning of the Annuity
Act* — — Page 159

SECT. IX. *Of setting forth the names of the par-
ties in the deeds and memorial* — 166

— X. *Of the witnesses to each deed* — 168

— XI. *Whether the securities are void, or
merely voidable, for any defect in the memo-
rial, and herein who may take advantage of
such defect* — — 171

— XII. *What is a good consideration for an
annuity within the act; and at what time the
consideration-money must be paid* — 189

— XIII. *Of recovering back the consideration
where the deeds, &c. are set aside on account of
a defective memorial* — — 200

— XIV. *Of applying by motion to the Court
in which any action is brought, or any judg-
ment entered up; within what time this ap-
plication should be made; and herein what is
an action within the Annuity Act* — 230

— XV. *Of the jurisdiction of the Courts where-
in any judgment is entered on an application
under the Annuity Act; and herein where they
have jurisdiction before any action brought or
any*

CONTENTS.

xiii

<i>any judgment entered, and how far their power extends with respect to setting the securities aside</i>	— —	Page 245
---	-----	----------

CHAP. II.

SECT. I. <i>Directions relating to the enrolment of the memorial, and the clerks' fees thereon</i>	262
— II. <i>An epitome of the practice relative to the enrolment of the memorial</i>	— 263
— III. <i>A Table of the days on which there is no business done at the Enrolment Office, and of the hours it is open on such days as business is done there</i>	— 273
— IV. <i>Forms of different memorials</i>	
1. <i>Of an annuity secured by bond and warrant of attorney</i>	— — 274
2. <i>Of an annuity or rent-charge by indenture, subject to redemption</i>	— — 276
3. <i>Of an annuity or rent-charge secured by deed, bond, and warrant of attorney, and judgment signed</i>	— — 278
<i>The Form of a Certificate of the enrolment of an annuity</i>	— — 282

CHAP.

CHAP. III.

Of purchasing or procuring annuities for infants — — Page 283

SECT. I. *Observations upon the Annuity Act, relative to the contract and assurance* 285

CHAP. IV.

Of a solicitor's, scrivener's, &c. fees for procuring money for annuities — — 287

SECT. I. *The form of an indictment against a broker for receiving more than ten shillings per cent. for procuring money to be advanced on a life annuity* — — 289

— II. *What evidence will support an indictment for taking more than the act allows for brokerage; and what is considered as taking more within the meaning of the Annuity Act* — — 291

— III. *In what cases the solicitor's, &c. fees for procuring money for annuities are not limited by the act.* — — 299

CHAP.

CONTENTS.

xv

CHAP. V.

<i>Certain cases to which the Annuity Act does not extend</i>	— — —	301
SECT. I. <i>Concerning the estate to which the Annuity Act extends</i>	— — —	302
— II. <i>What grants, regrants, assignments, or contracts for annuities are within the Annuity Act</i>	— — —	311
— III. <i>What are such grants as need not be registered, and what are considered to be voluntary annuities within this act</i>	— — —	334
Appendix	— — —	346

A TABLE

A TABLE

OF THE

NAMES OF THE CASES.

	A.	Page
ALLAN ats. Toldervy	—	144, 158
Arkwright ats. Crofsley	—	172
B.		
Barwick v. Reed	—	259
Beauchamp v. Borret	—	220
Birch ats. Walburn	—	104, 107, 324
Birch ats. Dixon	—	47, 324
Bolton, Duke of, v. Williams	37, 53, 80, 163, 167, 224,	319, 322
Borret ats. Beauchamp	—	220
Broomhead v. Eyre	—	159, 183, 232, 298, 324
Bromley v. Greathead	—	45, 324
Bunce ats. Sawyer	—	74
Burlton ats. Hood	—	24, 113, 139, 313
C.		
Caines ats. Craufurd	—	244, 251
Chester, ex parte	—	51, 248
Cousins v. Thompson	—	117, 136, 238
Cox v. Wright	—	69, 162
Crofsley v. Arkwright	—	172
Crespigny v. Wittenoom	—	219, 335
Craufurd v. Caines	—	244, 251
Davidson	—	Davidson

		Page
D.		28
Davidson v. Lord Foley	—	—
Dann d. Dolman v. Dolman	—	36, 145, 184
Dixon v. Birch	—	47
Dolman ats. Dann d. Dolman	—	36, 145, 184
Downes v. Parkhurst	—	50
E.		
Evans ats. Fenner	—	71, 241
Everard ats. Ince	—	347, 352
Eyre ats. Broomhead	—	159, 183, 232, 298, 324
F.		
Fallon, ex parte	—	58, 191
Fenner v. Evans	—	71, 241
Foley, Lord, ats. Davidson	—	28
Foley ats. Grant	—	38, 235, 320, 323
Foster ats. Hammond	—	325
Franco v. Lindo	—	221
G.		
Garrood v. Saunders	—	233
Gilham ats. The King	—	292
Grant v. Foley	—	38, 235, 320, 323
Greathead ats. Bromley	—	45, 324
H.		
Haines v. Hare	—	246
Hall v. Whalley	—	32
Hammond v. Foster	—	325
Harding ats. Saunders	—	124, 181, 230
Hare ats. Haines	—	246
Harris ats. Sowerby	—	131
Hart v. Lovelace	—	56, 169, 256
Holmes ats. Latlefs	—	17
Hopkins v. Waller	—	22, 25
Hood v. Burlton	—	24, 113, 139, 313
	a	Hodges

Hodges v. Money & al.	—	Page 118, 134
Hudson v. Skinner	—	319
Hurdis ats. Rosher	—	33
Hutton v. Lewis	—	343
I.		
Ince v. Everard	—	347, 352
J.		
Jackson v. Lever	—	328
Jaques v. Withy	—	104, 156, 199
K.		
The King v. Gilham	—	292
Kirkman v. Price	—	102, 198
L.		
Latlefs v. Holmes	—	17
Lever ats. Jackson	—	328
Lewis ats. Hutton	—	343
Lindo ats. Franco	—	221
Lovelace ats. Hart	—	56, 169, 256
M.		
Millard ats. Watts	—	72, 163, 166
Money & al. ats. Hodges	—	118, 134
Mortimer ats. Simmonds	—	108, 236
Murray ats. Rumball	—	64
O.		
Oliver v. Style	—	121
Oxlade ats. Davidson	—	49
P.		
Panter's cafe	—	19
Parkhurst ats. Downes	—	50
Price ats. Kirkman	—	102, 198
Rafal		

R.		Page 207
Raftal ats. Straton	—	—
Reed ats. Wright	—	—
Reed ats. Barwick	—	114
Rofher v. Hurdis	—	259
Rumball v. Murray	—	33
	—	64

S.		
Saunders v. Harding	—	124, 181, 230
Saunders ats. Garwood	—	233
Sawyer v. Bunce	—	74
Sherfon v. Oxlade	—	49
Shove v. Webb	—	103, 190, 201
Shrapnel v. Vernon	—	303
Skinner ats. Hudfon	—	319
Sowerby v. Harris	—	131
Straton v. Raftal	—	207
Style v. Oliver	—	121
Symmonds v. Mortimer	—	108, 236

T.		
Thomfon ats. Coufins	—	117, 136, 238
Thurkill v. Wallace	—	249
Thurfton's cafe	—	20
Toldervy v. Allan	—	144, 158

V.		
Vernon ats. Shrapnel	—	173

W.		
Waller ats. Hopkins	—	22, 25
Wallace ats. Thurkill	—	249
Wafburn v. Birch	—	104, 107, 324
Watts v. Millard	—	72, 163, 166
Webb ats. Shove	—	103, 190, 201
Whalley ats. Hall	—	22
		Williams

THE NAMES OF THE CASES.

Williams ats. Duke of Bolton,	Page 37, 53, 83, 163, 167, 224, 319
Withy ats. Jaques	_____ 104, 156, 199
Wittenoom ats. Crespigny	_____ 219, 335
Wright v. Reed	_____ 114
Wright ats. Cox	_____ 69, 162

ADDENDA ET CORRIGENDA.

Page 4, last line of the note, instead of 46, insert 461.

22, for *sessions* read *session*.

37, in margin, 5 line, for *E.* read *G.*

54, in margin, 2 line, for *bond* read *point*.

55, line 13, after *that* insert *Court*.

Ib. line 21, after *that* insert *the*.

57, after (*a*) put a full stop, and then add, "*In answer to which,*"

89, line 10, for *there* read *which*.

Ib. line 11, dele *in which*.

108, line 2, after *looked* add *upon*.

143, line 20, for *they* read *it*.

192, line 5, for *join* read *joint*.

232, line 16, for *have* read *order*.

291, line 15, add *the* after *strike*.

316, line 2, for *And* read *But*.

INTRODUCTORY

CHAPTER.

AN annuity is a certain annual sum of money granted to another in fee-simple, fee-tail, for life, or years; a rent-charge is the same in that respect, but differs materially as to the property which is liable to the payment of it; the former charges the person of the grantor only, whereas the latter *et vi termini* is a burden imposed upon, and issuing out of lands: However, when both person and estate are made liable, as they most commonly are, such a grant is then generally called an annuity. As the peculiar properties of each have no connexion with this work, which is founded on a positive statute, prescribing certain solemnities, requisite merely to the validity of annuities, perhaps it can, in no case, be less necessary to investigate the etymology of the two words, because no light can possibly be derived to the subject, but what tends to elucidate the construction which that statute has received.

B

The

INTRODUCTORY CHAPTER.

The practice of purchasing annuities for lives at a certain price or premium, instead of advancing the same sum on an ordinary loan, arises usually from the inability of the borrower to give the lender a permanent security for the return of the money borrowed, at any one period of time. He therefore stipulates (in effect) to re-pay annually, during his life, some part of the money borrowed; together with legal interest for so much of the principal as annually remains unpaid, and an additional compensation for the extraordinary hazard run, of losing that principal entirely by the contingency of the borrower's death (a); all which considera-

(a) From this definition of Mr. Justice Blackstone's 2 Comm. 461. it might be inferred, that if the borrower lives long enough to repay, in that form, the whole of the principal, together with legal interest, and a compensation for the hazard run of losing them all, that he would, from that moment, be discharged from the future payment of the annuity; but that is not so, for the annuity continues payable till the borrower's death, although the annual payments have amounted to the whole of the sum originally borrowed, of the legal interest, and of the additional sum by way of compensation, and although all possibility of loss is at an end; neither can any relief be obtained in a Court of Equity on that account, as appears from Doctor *Collins's* case cited in 2. Bro. Ch. Ca. 176, where a bill was filed, praying that the annuity might cease, because the party

INTRODUCTORY CHAPTER.

tions being calculated and blended together, will constitute the just proportion or *quantum* of the annuity which ought to be granted. The real value of that contingency must depend on the age, constitution, situation, and conduct of the borrower; and therefore the price of such annuities cannot, without the utmost difficulty, be reduced to any general rules. So that if, by the terms of the contract, the lender's principal is *bonâ fide* (and not colourably) put in jeopardy, no inequality of price will make it an usurious bargain (*a*);

party had outlived the payment of principal and interest, but was dismissed. It appears to me, that as soon as the principal is advanced, it is to be looked upon as sunk, for if the borrower were to die immediately, it actually is so; and that therefore he only stipulates (in effect) to pay the lender legal interest, with an annual compensation for the loss of the sum advanced, and for the hazard run of his losing by the borrower's death, not only that interest, but the future payment of that annual compensation.

(*a*) Cases of this nature are to be found in Carth. 67. 1 Willf. 286. 3 Willf. 390. 1 Atk. 301. 342. 1 And. 121. Noy. 151. Cro. Eliz. 642. 741. 1 Brownl. 108. 3 Keb. 304. 2 Lev. 7. 4 Leon. 208. 5 Co. 69. 2 And. 15. Moor 397. 398. 1 Sid. 27. Comb. 125. 1 Show. 8. Cro. Jac. 507. 1 Lutw. 470. Cowp. 112. 671. 770. 3 Term Rep. 536. 2 Bl. 863. 1 Hawk. P. C. 247. 1 Bulfr. 36. Barnes 277. 3 Bac. Abr. 601. 691. Cro. Jac. 252. Fobl. Tr. Eq. 238.

B 2 though,

INTRODUCTORY CHAPTER.

though, under some circumstances of imposition, it may be relieved against in equity (*a*).

To throw, however, some check upon improvident transactions of this kind, which are usually carried on with great privacy, and to provide against the fraud and circumvention of those, who are always too ready to take advantage of the necessities of distressed persons desirous of taking up money upon annuities, the statute 17 G. 3. c. 26. (commonly called the Annuity Act) has directed, that upon the sale of any life annuity of more than the value of 10*l.* *per annum* (unless secured on a sufficient pledge of lands in fee-simple or fee-tail, in possession at the time of the grant, of an annual value equal to the annuity or stock in the public funds) the true consideration (which shall be in money only) shall be set forth and described

(*a*) For cases which have been relieved against in equity see 2 P.Wms. 203. 3 P.Wms. 290. Moseley 247. 2 Salk. 449. Dougl. 450. Cal. Temp. Talbot 40. 1 Will. 230. 2 Vez. 281. 422. 518. 2 Bro. Ch. Ca. 167. 179, n. 400. 1 Vez. 155. 503. Prec. Chan. 206. 1 Vern. 75. 167. 239. 2 Vern. 14. 1 P.Wms. 310. 3 Bro. Ch. Ca. 117. 1 Vez. Jun. 215. S.C. 2 Bl. Com. 46.

in

in the security itself; and a memorial of the date of the security, of the names of the parties, *cestui que trusts*, *cestui qui vires*, and witnesses, and of the consideration-money, shall, within twenty days of its execution, be enrolled in the Court of Chancery, else the security shall be null and void; and in case of collusive practices respecting the consideration, the Court in which any action is brought, or judgment obtained upon such collusive security, may order the same to be cancelled, and the judgment, if any, to be vacated: and in order to protect minors from the difficulties which the want of an immediate supply frequently occasions, the same statute directs that all contracts for the purchase of annuities from infants, shall remain utterly void, and be incapable of confirmation after such infants arrive at the age of maturity: and makes the offence of procuring or soliciting an infant to grant any life annuity, or to promise or otherwise engage to ratify it when he comes of age, an indictable misdemeanor, and punishable by fine or imprisonment: as it does also the offence of taking more than 10*s. per cent.* for procuring money to be advanced on any life annuity.

B 3

By

INTRODUCTORY CHAPTER.

By these provisions the Legislature has in a great measure remedied the mischievous effects arising from this mode of raising money; and has guarded against all collusive, and inequitable dealings in such transactions, as far as human prudence can go; and although some few cases have been brought before the different Courts at Westminster, which have appeared to bear hard upon individuals, yet if they were set in opposition to the benefit which the public in general have derived from this act, the balance would be found to be greatly in favor of the latter: for which reason the Courts have, in many instances, declared their unwillingness to abridge the operation of this wise and politic law. In determining those cases, various questions have arisen upon the construction of many of the clauses in this act, and the intention of the Legislature has been distinctly shewn by the interpretation which such clauses have received. Many of those decisions are contained in this work, digested and arranged after the particular clauses of the statute which guided the Courts in making each decision, together with some of the most material arguments of Counsel, but those of the different Judges are reported at full length.

Anno regni decimo-septimo

GEORGII III. REGIS.

CAP. XXVI.

An Act for registering the Grants of Life Annuities; and for the better Protection of Infants against such Grants.

WHEREAS the pernicious practice of Preamble.
raising money by the sale of life annuities hath of late years greatly increased, and is much promoted by the secrecy with which such transactions are conducted; be it therefore enacted, by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same,

SECT. 1. "That a memorial of every deed, bond, instrument, or other assurance, whereby any annuity or rent-charge shall, from and after the passing of this act, be granted for one or more life or lives, or for any term of years

B 4

or

A memorial of all deeds, bonds, &c. for granting life annuities, shall, within 20 days of the execution thereof,

be inrolled in the court of chancery; which shall contain the date, names of the parties, witnesses, &c. and the consideration, &c. otherwise every such deed, bond, &c. shall be void.

or greater estate, determinable on one or more life or lives, shall within twenty days of the execution of such deed, bond, instrument, or other assurance, be inrolled in the high Court of Chancery; and that every such memorial shall contain the day of the month, and the year, when the deed, bond, instrument, or other assurance bears date, and the name of all the parties, and for whom any of them are trustees, and of all the witnesses; and shall set forth the annual sum or sums to be paid, and the name of the person or persons for whose life or lives the annuity is granted, and the consideration or considerations of granting the same: otherwise every such deed, bond, instrument, or other assurance, shall be null and void, to all intents and purposes.

SECT. 2. And be it further enacted by the authority aforesaid, "That before any judgment shall be entered of record upon any warrant of attorney for recovering or securing the payment of any annuity or rent-charge that hath already been granted for one or more life or lives, or for any term of years or greater estate determinable upon one or more life or lives, and before

Before judgment shall be entered of record upon any warrant of attorney for recovering any annuity already granted,

fore any execution shall be sued out, or action brought on any such judgment already entered, or on any deed, bond, instrument, or other assurance already executed for the purposes aforesaid, a like memorial of the deed, bond, instrument, or other assurance, shall be inrolled in the high Court of Chancery; and in case the party shall neglect to inrol the same, any such judgment, execution, or proceeding in the action respectively, shall be null and void.

and before execution shall be sued out, &c. on any judgment already entered &c. a memorial shall be inrolled as aforesaid.

SECT. 3. And be it further enacted, by the authority aforesaid, "That in every deed, instrument, or other assurance, whereby any annuity or rent-charge, shall, from and after the passing of this act, be granted, or attempted to be granted, the consideration really and bonâ fide (which shall be in money only) and also the name or names of the person or persons by whom, and on whose behalf, the said consideration, or any part thereof, shall be advanced, shall be fully and truly set forth and described in words at length; and in case the same shall not be fully and truly set forth and described, every such deed, instrument, or other assurance, shall

All future deeds &c. for granting of annuities shall contain the consideration, and the names of the parties, in words at length.

Anno Regni decimo-septimo

shall be null and void to all intents and purposes.

If any part of the consideration shall be returned, or any notes shall not be paid when due, &c.

SECT. 4. And be it further enacted, "That if any part of the consideration shall be returned to the person advancing the same; or in case the consideration, or any part of it, is paid in notes, if any of the notes, with the privity and consent of the person advancing the same, shall not be paid when due, or shall be cancelled or destroyed without being first paid; or if the consideration, or any part of it, is paid in goods; or if any part of the consideration is retained on pretence of answering the future payments of the annuity, or on any other pretence; in all and every of the aforesaid cases, it shall and may be lawful for the person, by whom the annuity or rent-charge is made payable, to apply to the Court in which any action is brought, for payment of the annuity, on judgment entered, by motion, to stay proceedings on the judgment or action; and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, instrument, or

the court may order the deed to be cancelled, &c.

or other assurance, to be cancelled, and the judgment, if any has been entered, to be vacated.

SECT. 5. And be it further enacted,
“ That a particular roll shall be provided
and kept by the clerks of the inrollments in
Chancery, or their deputy, on which such
memorials shall be entered, and that every
such memorial shall be duly inrolled in or-
der of time, as the same shall be brought to
the office; and the said clerks of the inroll-
ments, or their deputy, shall specify upon the
roll the certain day, hour, and time on which
such memorial is brought to the office, and
shall grant a certificate of the inrollment
thereof when required; and that there shall
be paid for the inrollment of every such me-
morial the sum of one shilling, and no more,
in case the same do not exceed two hundred
words; but if such memorial shall exceed
two hundred words, then after the rate and
proportion of six-pence for every one hun-
dred words, and the like fees for every certi-
ficate and copy given; and the fee of one
shilling for every search in the office, and
no more.

Directions re-
lating to the in-
rollment of me-
morials.

The clerks' fees.

SECT.

Anno Regni decimo-septimo

All contracts
for the purchase
of annuities
with any person
under 21 years
of age, to be
void.

SECT. 6. And be it further enacted by the authority aforesaid, "That all contracts for the purchase of any annuity with any person being under the age of twenty-one years, shall be and remain utterly void, any attempt to confirm the same, after such person shall have attained the age of twenty-one years notwithstanding: and that if any person shall, either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person being under the age of twenty-one years, to grant or attempt to grant any annuity or rent-charge, or to execute any bond, deed, or other instrument, for securing the same; or shall advance or procure, or treat for any money to be advanced to any person under the age of twenty-one years, upon consideration of any annuity or rent-charge, to be secured or granted by such infant, after he or she shall have attained his or her age of twenty-one years; or shall induce, solicit, or procure any infant, upon any treaty or transaction for money advanced, or to be advanced, to make oath, or give his or her word of honour, or solemn promise, that he or she will not plead infancy, or make any other defence against the

Any person
who shall procure or solicit
any minor to
grant an annuity, &c.

demand

demand of any such annuity or rent-charge, or the repayment of the money advanced to him or her when under age; or that when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such annuity or rent-charge; every such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any Court of Assize, Oyer et Terminer, or General Gaol Delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment as the court shall think fit to award.

shall be punished by fine or imprisonment, &c.

SECT. 7. And be it enacted by the authority aforesaid, " That all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other persons or person, who, from and after the passing of this act, shall ask, demand, accept, or receive, directly or indirectly, any sum or sums of money, or any other kind of gratuity or reward, for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually and bonâ fide advanced and paid as and for the price or consideration of any such annuity or rent-charge, over and above the sum of ten shillings for every one hundred

Solicitors, scriveners, &c. who shall take more than 10s. per 100l. for procuring money for annuities,

Anno Regni decimo-septimo

hundred pounds so actually and bonâ fide advanced and paid, shall be deemed and adjudged guilty of a misdemeanour; and being lawfully convicted of such offence in any

Court of Assize, Oyer and Terminer, or General Gaol Delivery, shall and may for every such offence, be punished by fine and imprisonment, or one of them, at the discretion of the court; and that the person or persons who shall have paid or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same.

shall be punished by fine, imprisonment, &c.

SECT. 8. And be it further enacted, "That nothing in this act contained shall extend to any annuity or rent-charge given by will, or by marriage settlement, or for the advancement of a child; nor to any annuity or rent-charge secured upon lands of equal or greater annual value, whereof the grantor was seized in fee-simple or in fee-tail, in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity; nor to any voluntary annuity grant-

Certain cases to which this act does not extend.

ed without regard to pecuniary consideration; nor to any annuity or rent-charge granted by any body-corporate, or under any authority or trust created by act of parliament; nor to any annuity where the sum to be paid does not exceed ten pounds annually, unless there be more than one such last mentioned annuity from the same grantor or grantors, to or in trust for the same person or persons.

CHAP. I.

SECT. I.

When the Annuity Act took Effect.

17 G. 3. c. 26.

f. 1.

FROM and after the passing of this Act,
 &c.] These words operate by legal
 relation from the first day of the Session in
 which the Annuity Act passed, viz. 31st of
 October, 1776, and the Act is considered as
 taking effect from that day, and not from the
 day of its receiving the royal assent, which
 was not till several months afterwards. Ac-
 cordingly the Court of King's Bench held,
 that an annuity and the instruments by which
 it was secured were void, because they were
 not enrolled within the time limited by the
 Act, although such legal relation made it
 impossible for the parties to comply with
 the requisition of the Act.

That

When the Annuity Act took effect.

17

That was the case of *Latliffs*, executrix, &c. and *Patten* against *Holmes*, where a motion was made in the Court of King's Bench for a rule to set aside some annuity deeds, because they were not registered as the annuity act directs. It appeared from a special statement of the case, that in *January* 1777, *J. Latliffs* the testator and *Patten* agreed to give *Holmes* 96*ol.* for an annuity of 12*ol.* payable for his life; for securing which he executed an indenture tripartite, dated the 14th *January*, 1777, and a bond and warrant of attorney of the same date. On the 13th of *August*, 1777, *Patten* by a deed-poll assigned over his proportionable part of the annuity to *J. Latliffs* for a valuable consideration. By the Annuity Act it is enacted, that every deed, bond, &c. whereby an annuity shall be granted, after the passing of the act, shall *within twenty days after the execution thereof* be enrolled in the Court of Chancery, in the manner in the said act mentioned, otherwise every such deed, bond, &c. shall be null and void. That act did not receive the royal assent until *May* 1777, being near four months after the execution of the said assurances; and the session in which the act passed com-

C menced

Ch. I. f. 1.
Latliffs v.
Holmes, 4 Term
Rep. 662.

C^h. 1, s. 1.

menced on the 31st of *October* 1776. No memorial of any of the assurances for securing the annuity, or of the said deed-poll of *Patten* was enrolled in Chancery until the 1st of *December* 1791, when memorials of both were enrolled. No judgment had been entered up by virtue of the said warrant of attorney, nor any action or suit commenced on the said bond. The question was,—Whether this annuity and the instruments by which it was secured, were void?

The Counsel against the rule argued, that if the act operated by legal relation from the first day of the Session to every intent and purpose, it was a fiction of law that would in this instance have the effect of working the greatest injustice, as the party would suffer for not having done an act in pursuance of the statute, which the statute did not require him to do till it had become impossible. He admitted the general principle of relation in Acts of Parliament to the first day of the Session in which they are passed, as firmly settled in the case of the *Attorney General v.*

Panier

Panier (a) but said that this case might be distinguished from that, because in that case the thing required by the Act to be done, however unjust, was possible at least; this case could not therefore be governed by that decision. He also cited the case of *Forbes v. Fanshawe*, Tr. 1784, in *C. B.* where that Court were of opinion that the words “from and after the passing of this act,” gave its commencement from the day of its receiving the royal assent, and not from the first day of the Session.

(a) *Panier*'s case arose upon the 7 *Geo.* 3. c. 47, which enacted, that a duty of 6*d.* in the pound should be paid upon all rice exported out of the kingdom, which had been imported duty free: that act did not receive the royal assent till 29th of *June*, 1767; and the question was, Whether it attached upon such rice as had been exported between the first day of the Session, viz. 11th *November*, 1766, and the day on which the act passed? And the House of Lords held that it did. Dom. Proc. 1772, 6 Bro. P. C. 553.

See also 4 Inst. 25: Bro. Abr. Parl. pl. 86. Bro. Abr. Relation, pl. 43. 1 And. 295. Hob. 111. Cro. Car. 424. 1 Sid. 310. 1 Lev. 91. Comb. 413. 1 Ld. Raym. 370.

C 2

Per

Per Curiam.—These arguments were urged at the bar of the House of Lords in the case of *The Attorney General and Panter*; but the House, by the unanimous opinion of the Judges, determined that the rule of law, that where no specific day is mentioned in an act of Parliament from which it is to take effect, it commences by legal relation from the first day of the Session, had been so long settled that it could not be shaken. In that case the act of Parliament by which the duties were imposed, referred to another act of the same Session, which (it was contended) took that case out of the general rule; but that argument also had no weight. And it is to be remembered that the opinion of the Judges there was founded on prior determinations, by one of which the life of a person was affected (*a*). With respect to the

(*a*) *The King* against *Thurston*. Indictment of murder; and on a special verdict found at *the Assizes at Bury*, the case was thus,—In *Hilary* term 1659, a *latitat* issued to arrest *Thurston* returnable in *Easter* term 1660, on which on the 29th of *May* he was arrested by a warrant thereupon, and upon that arrest the bailiff was killed; and afterwards an act of parliament was passed for the confirmation of all judicial

When the Annuity Act took Effect.

21

Ch. I. r. 1.

the argument used in this case, that by this construction, the Annuity Act requires an impossibility, it must be observed that the act only renders the thing which is done, void, unless certain requisites be complied with. And the great hardship of this case arises out of facts of which the Court can take no judicial notice; for though the day when this act received the royal assent is stated in the case, we can only know by a reference to the statute-book when the act passed; and by that it appears to have passed on the 31st of *October*, the first day of the Session. Rule absolute.

dicial proceedings, which act related to the first day of the Parliament, viz. 15th of *April*, 1660, and the sole question was,—If by the relation of the act, which made the proceedings legal, and the arrest good (which else had been void and without authority) this killing be murder? And it was argued at the bar, by *Kelynge* for the King, and by *Jones* for the defendant: and *Kelynge* said, that by relation all the process is made good, for it shall relate to the first day of the Parliament; and *Jones* agreed that the act related to the first day of the Parliament, but not to such intent as to make it murder *ex post facto*, which was not so when the fact was done: The Court said nothing. But afterwards in *Egbert* term 16 *Car.* 2, the Reporter says he heard *Thurston* plead his pardon of this murder, whereby it seems as if the opinion of the Court was against him. 1 Lev. 91. Hil. 14 and 15 *Car.* 2. B. R.

C 3

So

Ch. I. f. 1.

Hopkins v.
Waller, 4 Term
Rep. 463.

So in the case of *Hopkins v. Waller*, where the annuity was granted in 1777, and the judgment was entered up before the Annuity Act was passed, but not till after the first day of the Sessions, and a rule had been obtained, calling on the plaintiff to shew cause why the judgment should not be set aside on account of a defect in the memorial; against which it was observed that the annuity was granted before the act passed, but it was answered that the transaction must be considered as subsequent to the passing of the Annuity Act, which had relation to the first day of the Sessions; and the Court made the rule absolute.

Hall v. Whalley,
4 Term Rep.
662. n.

The same point was decided by the same Court in *Hall v. Whalley*, *H. 29 Geo. 3.* on a rule to shew cause why the judgment on a warrant of attorney for securing an annuity to the plaintiff's testator should not be set aside, &c. where there were several authorities cited (*a*) against the rule, and

(*a*) 12 Mod. 688. Hob. 87. Plow. 18. 109. 2 Lev. 277. 2 Mod. 310. 1 Ld. Raym. 370.

many

many others in (a) support of it: but the Court considered the point as fully settled in (b) *Panter's* case, and made the rule absolute (c).

(a) 4 Inst. 25. 1 And. 295. 6 Bro. P. C. 553.

(b) Ante 19. n.

(c) But it is now enacted by 33 Geo. 3. c. 13, That the clerk of the Parliaments shall indorse on every act which shall pass after the 8th day of *April*, 1793, immediately after the title of such act, the day, month, and year, when the same shall have passed, and shall have received the royal assent, and such indorsement shall be taken to be a part of such act, and to be the date of its commencement, where no other commencement shall be therein provided.

SECT. II.

What are such Deeds, &c. as ought to be enrolled.

17 G. 3. c. 26.
ante. 7.

Hood v.
Burlton.

2 Vez. Jun. 29.

4 Bro. 78.

Ch. Ca. S. C.

See the case
more at length
post.

THAT *a memorial of every deed, bond, instrument, or other assurance, &c.*] In the case of *Hood v. Burlton*, where the question was, whether the transaction ought to be considered as the grant of an annuity, or whether it was merely a sale of certain dividends arising from money in the funds, because if it was the former, it was necessary that the deed of assignment should have been enrolled according to the act, Lord Commissioner Eyre said, "It is manifestly the object of the act to comprehend all manner of instruments calculated to secure the payment of an annuity. Though the language is, "whereby an annuity shall be granted," yet the construction ought to be, whereby it shall in any manner be secured to be paid; and therefore if the Court thinks this an instrument, whereby an annuity is secured to be paid, however it has been granted, all those instruments must be within the act, or there is an end of it. I am of opinion, that I am obliged to hold this annuity within the act, and

and that there must be a regular memorial in the terms of the act of all the instruments by which it is secured.

A warrant of attorney to enter up a judgment, is an instrument which ought to be set forth in the memorial within the meaning of this clause in the act; and the Courts will set aside a judgment entered on an annuity bond by virtue of such warrant of attorney, if it is not registered, notwithstanding there is a memorial of the bond and judgment.

As was done in the case of *Hopkins* and *Waller*, where an annuity was granted, and a judgment was entered up on the bond securing it, and there was a memorial of the bond and judgment, but not of the warrant of attorney; for which defect a rule was obtained, calling on the plaintiff to shew cause, why the judgment should not be set aside; against which, the counsel who shewed cause, produced an affidavit, stating, that the plaintiff never had the warrant of attorney in his possession, and that it was originally delivered to the defendant's attorney, who had since absconded: he also contended, that the judgment being the operating instrument, it was not necessary

Hopkins v.
Waller,
4 Term Rep.
463.

What are such Deeds, &c.

fary to insert the warrant of attorney in the memorial, that being merely an authority for entering up the judgment, after which it was *functus officio*; and that the act required the several deeds, by which an annuity is granted, to be enrolled merely for the purpose of conveying information to the public of the real transaction between the parties, but that a warrant of attorney, from the very nature of it, could convey no information whatever.

In support of the rule it was argued, that the warrant of attorney was an important deed, because it was the foundation of the judgment; and in answer to the fact now sworn, "that the defendant's attorney had the warrant of attorney," that the plaintiff himself should have taken care to insert it in the memorial for his own security; and that not having done so, he ought to suffer for his own neglect.

Lord Kenyon, C. J.—If it had appeared that the warrant of attorney had been lost before the enregistering of the memorial, it might have varied the case; but here that is not shewn, and therefore it ought to have been

been registered. For the meaning of the Legislature was, that every instrument, by which an annuity is secured, should be inserted in the memorial. The words of the act are, *deed, bond, instrument, or other assurance*; and it is impossible to say that a warrant of attorney does not fall within one of these.

Buller J.—The warrant of attorney must have existed at first, and then it was incumbent on the plaintiff to enrol it: its being lost since that time is no answer to this act of parliament. *Per Curiam*, the rule absolute.

So also in another case where a warrant of attorney had been given to confess a judgment to secure an annuity (together with other securities) the Court of Common Pleas determined upon the authority of the foregoing decision, that the memorial must state the warrant of attorney as well as the other securities, and this too, notwithstanding the judgment is entered up before the time for enrolling the memorial expires. Neither is there any difference in this respect, whether the

the annuity was granted, and the warrant of attorney given *before* or *after* the time when the annuity act passed.

Davidson v.
Lord Foley,
2 H. Bl. 12.

That was the case of *Davidson* against Lord *Foley*, and others, where it appeared that on the 4th of *February*, 1774, the defendants in consideration of 700*l.* paid to them by the plaintiff, executed a bond to the plaintiff, in the penalty of 1400*l.* conditioned for the payment of an annuity of 100*l.* a year to the plaintiff; and at the same time a warrant of attorney was given to confess judgment, which was entered up as of *Easter* term, 14 *Geo.* 3. On the 31st of *May*, 1785, a memorial was enrolled in the Court of Chancery, stating the bond and judgment, but taking no notice whatever of the warrant of attorney. In the year 1786 an *elegit* issued on the judgment, and a moiety of the defendant's lands were delivered to the plaintiff. A rule was granted in *Trinity* term, 1791, to shew cause, why the judgment and all subsequent proceedings, together with the writ of *elegit*, should not be set aside, on the ground that the warrant of attorney was not stated in the memorial.

The

The Counsel, who shewed cause, argued, that the only deed which is required to be set forth in the memorial, is that by which the annuity is *granted*, and that a warrant of attorney was not of that description, nothing being granted by it, as it was merely an authority to enter up judgment: and that as the transaction happened before the annuity act passed, it could not occur to the parties to preserve a mere useless instrument, when the purpose for which it was given was answered.

The Court took time to consider, when Lord *Loughborough*, Ch. J. in the term following declared, that the reason for their delaying to pronounce their judgment was, that a similar (a) case was at that time depending in the Court of King's Bench, which was now decided, and with which decision this Court fully concurred; and that they were of opinion, that the objection made to the memorial, in the present case, was well founded, and not to be obviated. Rule absolute.

(a) *Hopkins v. Waller*, ante 25

The same point was decided by the Court of Chancery, where a bill was filed by the same

Ch. I. f. 2.

(a) Davidson v.
Foley, ante 30.
3 Bro. Ch. Ca.
598.

same (a) parties, as in the foregoing case, praying the Court to remove such things out of their way as would enable them to effectuate their legal right, and to assist them in obtaining executions upon several writs of *elegit*, sued out of the Court of Common Pleas, upon judgments entered up upon bonds securing annuities by virtue of several warrants of attorney, which securities *were stated to have been enrolled according to law*, but though the bonds were enrolled, the warrants of attorney to confes judgment were not comprised in the memorial.

At the hearing of the cause when an objection was made to the memorial on that account, the Counsel for the plaintiff argued, First, that it was not necessary a memorial of the warrants of attorney should be enrolled; and Secondly, that if it was necessary, that the cause might stand over; and a new memorial be enrolled comprising the warrants; and cited several authorities where the Court had suffered causes to stand over for the purpose of doing acts necessary in order to the plaintiff's remedy. 2 Bro. Ch. Ca. 90. 620. 3 Atk. 124.

Lord *Thurlow*, Chancellor (during the argument, and at the close of it) expressed great doubt as to both the points. He seemed to think, that whatever made a part of the security must be comprised in the memorial; and that as the judgment must be founded on a warrant of attorney, the warrant of attorney ought to appear; as, otherwise, the Court could not gather that there was a warrant of attorney to support the judgment. He said, all he could gather from the cases was, that where the Court could see there was a good judgment, it would not stop without aiding that title by what is called an equitable *elegit*, but he could not carry it higher than that; that the *æquitas sequens legem* must be such as to assure the Court, that the case was such as it could be followed by a legal execution; but that where it appeared that the judgment could not be followed by a legal *elegit*, the Court could not follow it by an equitable *elegit*. That, in this case, he considered the memorial as necessary to the judgment, and that if he was satisfied that the warrant of attorney was not an assurance, yet he should not be justified in determining so contrary to the

Ch. I. c. 2.

the opinion of a (a) Court of Law, which had only held, that where the consideration was expressed in the bond, it need not be so in the warrant of attorney, but must be taken to have held that the warrant of attorney was an assurance, as otherwise, they would have contradicted the third (b) section of the act. His Lordship expressed more doubt on the second point, Whether he should not now permit the parties to enrol the securities, and by amending the bill, bring the matter upon record. He agreed, that as the matter now stood, it amounted to a nonsuit; but as, supposing a proper memorial enrolled, the plaintiff's title would be perfect, he doubted whether he should not admit them to supply circumstances ancillary to the relief sought, or should put them to the filing a new bill. In the cases put, nothing new appeared upon the record. In that of a specific performance, if the party was able to make a title at the time of the decree, the time did not appear when he became able so to do. So, in the case of an

(c) Ante. 9.

(a) *Hodges v. Money*, 4 Term Rep. 500. *Sherfon v. Oxlade*, *ibid.* 824. and post.

unstamped

unstamped instrument, it was only hearing the cause one day instead of another; and the instrument, at the hearing, would be stamped. It was the same in the case of the administration. This would be like the case of the stamp, if the stamp bore a date upon it, because then it would appear upon the record, that it was subsequent to the filing of the bill. His Lordship said, if the cause stood over for the purpose of enrolling the memorial, he did not see how it could be brought on the record but by a supplemental bill. But afterwards his Lordship decreed, that the bill should be dismissed, the plaintiffs not having registered proper memorials before they filed their bill.

So every instrument given to secure an annuity, even though it be only a collateral security given by a third person, as well as those deeds which are given by the grantor himself, must be registered under the annuity act, otherwise the security will be void. It was so decided in the case of *Rosher v. Hurdiss*, which was an action of debt on bond, dated 19th December, 1793. The defendant cravedoyer of the bond and the condition, the latter

D of

of which (after reciting, that by an indenture bearing even date with the bond, *T. Rede* and *J. Frederick*, in consideration of 300*l.* granted an annuity of 50*l.* to the plaintiff during the lives of the grantors, and of the survivor of them, and that *Rede* and *Frederick* had also given a bond and warrant of attorney to confess judgment on it for the payment of the annuity) was for the better securing of the annuity to the plaintiff; he then pleaded, that no memorial of the same writing obligatory, or of the indenture, bond, or warrant of attorney, in the condition mentioned, was enrolled in Chancery within twenty days of the execution, according to the directions of the annuity act. He also pleaded, that no memorial of the bond in question, "containing the names of all the witnesses," was enrolled, &c. To these two pleas there was a general demurrer. The Counsel in support of the demurrer admitted, that if this were a deed given by the grantor of the annuity, it would be void, because it was not properly registered under the annuity act, but attempted to distinguish that case from the present, by observing, that this was only a collateral security given by a
third

third person. That the annuity act, which requires a memorial of the deeds by which an annuity is *granted*, would be satisfied by the registering of the deeds made by the grantor, and that the act did not extend to deeds by which an annuity is *secured* after the grant of it, and that in this case, the bond in question was given some time after the annuity deeds were signed: but it appeared on the record that the bond bore even date with them.

Per Curiam. This construction would totally repeal the wise provisions of that act of parliament, the object of which was to disclose to the public the whole of the annuity transaction, and all the parties to it. This was an instrument to secure the payment of the annuity, and it should have been registered: in many cases the deed of the surety is the most effective security. If we were to determine that such an instrument as the one in question need not be registered, wherever fraud was intended, some nominal person would be brought forward as the ostensible party, and the real security would be concealed from the public eye. Judgment for the defendant.

D 2

In

Ch. I. s. 2.

Dann dem. Dol-
man v. Dolman,
5. Term Rep.
647.

In the case of *Dann* on the demise of *Dolman* against *Dolman*, where by an indenture between the lessor of the plaintiff, *H. Toten*, and *R. Griffith*, an annuity was granted by the plaintiff to *Toten*, to be issuing out of the premises of the plaintiff, which were demised to *Griffith* for 99 years, if the plaintiff so long lived, in trust to pay *Toten* his annuity; Mr. *J. Lawrence* said, "It has been argued, that the demise to *Griffith* is distinct from the grant of the annuity to *Toten*, and that consequently no part of that demise need be set forth in the memorial; but in that consists the fallacy of the defendant's argument. If indeed *Toten's* annuity has been granted by one deed, and the demise to *Griffith*, subject to that annuity, had been made by a separate deed, it would not have been necessary to register the latter, because that would not be a deed by which an annuity was granted; but the grant to *Griffith* in trust for *Toten* would operate as the grant of an annuity, if there had been no grant in the preceding part of the deed. *Griffith* therefore was trustee for *Toten*.

Every deed of assignment of any part of an annuity already granted and enrolled, must
be

be registered according to the requisites prescribed by this act, each assignment being in that respect considered as a fresh grant; accordingly where there was an application to the Court of Chancery respecting the validity of several such assignments, that Court decreed them to be void, because they were not properly registered.

Ch. l. f. 2.

That was the case of the Duke of *Bolton* against *Williams*, where an estate was charged with the payment of an annuity of 300*l.* for the separate use of Mrs. *Williams*, who had assigned parts of it to *Creswell* and *Sampson*; and upon a bill filed in the Court of Chancery by the present Duke of *Bolton*, to know to whom the arrears of the annuity granted by the late Duke were to be paid, as they had been with-held on account of a dispute amongst the representatives of the assignees and Mrs. *Williams*, objections were taken to the assignments on account of their not being properly registered; when the Counsel argued, that they were the assignments of parts of an existing annuity, and were therefore materially different from the grant of an annuity; that the act of parliament only

D 3

applied

Duke of Bolton
v. Williams, 2
Vez. Jun. 138.
4 Bro. Ch. Ca.
297. S. E.

applied to fresh annuities, and never had been held to extend to assignments.

The cause came first to be heard before Lord *Thurlow*, who at first expressed great doubt upon the point; but in *May* 1792, his Lordship declared that the deeds under which the representatives of the assignees claimed were void for the want of the enrolment of proper memorials thereof, and upon a re-hearing of the cause in *June* 1793, Lord *Loughborough*, Chancellor, affirmed that decree, saying, "Is not the assignment a deed whereby an annuity is granted for one or more lives?"

So the assignment of any annuity granted before the act passed, must be registered before the assignee can take any step upon it, if such assignment exists when the memorial of the original securities is enrolled.

Grant v. Foley,
Tr. 23 G. 3.
C. B. MSS.

That point was decided by the Court of *Common Pleas*, in the case of *Grant and Foley*, the facts of which were as follows:—On the 15th of *September*, 1773, *John Grant* purchased an annuity of 100*l.* per annum of *Thomas* and *Edward Foley*, for the sum of 700*l.* and for securing the same, the said *Thomas* and

Edward

Edward gave a bond in the penal sum of 1400*l.* conditioned for the payment of 100*l.* to *Grant*, his executors, administrators, or assigns, by four quarterly payments, during the joint lives of the said *Edward* and *Thomas*, and the life of the survivor of them, and also a proportionable part of the last quarterly payment of the said annuity, up to the day of the decease of the said *Thomas* and *Edward*, and the decease of the survivor; and on the same day they executed a warrant of attorney to confess judgment on the bond in the Court of *Common Pleas*, by virtue whereof a judgment was soon afterwards entered up in that Court. Also in *May*, 1774, *Grant* purchased a second annuity of 100*l.* of the said *Edward* and *Thomas*, for the like consideration as the former one, and secured by a like bond and warrant of attorney, in the same manner and with the same condition as the bond securing the former annuity, and a judgment was also entered up in the same Court on this second bond, at the suit of *Grant*. One year and a half's annuity, which was due on the first bond, and also half a year's annuity due on the second bond, had been paid to *Grant*. By two indentures

What are such Deeds, &c.

of assignment, bearing date the 4th of May, 1776, *Grant* transferred the two several bonds and judgments, and the two several annuities thereby secured, to *Robert Dallas*, who on the 16th of *October*, 1788, enrolled the above bonds *only*; and no other payments being made on the two several annuities, *Dallas* in *Michaelmas* Term, 1788, revived the above judgments, by *scire facias*, in the name of *Grant*, and about *March*, 1779, caused two several writs of *feri facias* to be issued out from the Court of *Common Pleas* upon the two judgments entered on the annuity bonds, one of which writs was indorsed to levy 122*5*l. and the other 117*5*l. besides fees, and were both delivered to the Sheriff of *Middlesex*, who by his bailiffs entered the house of one *John Maule*, let to Mr. *Edward Foley*, ready furnished, in *Portland Place*, and therein seized, and sold the goods and furniture belonging to *Maule*, who commenced an action of trover in *B. R.* against the Sheriff and *Grant*. In *Easter* Term, 1780, *Dallas*, who claimed the beneficial interest of the money levied, filed his bill in the Court of Exchequer, thereby praying a discovery of *Maule's* right and title to

to the goods, and for an injunction to stay proceedings at law for the recovery of the goods levied, which was obtained. After *Maule* had put in his answer, and before the proceedings in the Court of *Exchequer* were at an end, *Maule*, supposing there was some defect in the registering the two annuities, caused the office to be searched in *June*, 1782, when he found that the memorial of the first annuity which had been assigned by *Grant* to *Dallas* was as follows:—"A memorial of a bond executed by *Thomas* and *Edward Foley* to *John Grant*, dated 15th *September*, 1773, in 1400*l.* conditioned for the payment of an annuity of 100*l.* a year:" it stated also the consideration and the witnesses, but there was no mention of the warrant of attorney, or the manner in which the consideration was paid, or of the assignment to *Dallas*. There was a like memorial also of the other annuity bond, dated 9th of *May*, 1774.

In *Trinity* Term, 1782, upon the affidavit of the facts, *Maule* obtained a rule in the Court of *Common Pleas* for *Grant*, *Dallas*, and the defendants, in the action of trover brought

brought by *Maule*, to shew cause why the writ of *feri facias* issued and executed, should not be set aside with costs, upon the ground that the annuities on which the judgments were entered, were not properly registered, in as much as the warrant of attorney was omitted, and no notice taken of the assignment from *Grant* to *Dallas*.

The Counsel against the rule argued that the Annuity Act did not extend to, or limit any time for the registering of a *bonâ fide* assignment of an annuity, however it might, if it was intended to be assigned at the time of the grant, but required only that the assurances by which it was first granted should be enrolled; and that as the warrant of attorney was quite useless after the judgment was entered, that it was not necessary to insert it in the memorial. But that if the memorial was defective, the application was too late, and the Court were not bound to set aside the securities, and give summary relief; and that if the transaction was void, the party had an action, in which the matter might be specially stated, and more fully discussed.

Lord

as ought to be enrolled.

43

Lord *Loughborough*, Ch. J. said,—As to the summary mode of relief, and the *laches* on the part of *Maule* in not applying sooner, it is not positively charged that *Maule* knew the memorials were irregular; it is only grounded on inference. He is no party to the injunction bill filed in the name of *Dallas* in the year 1780; that leads him to enquire whether *Dallas's* claims are properly founded; and if he had known it at an earlier period, I doubt whether the Court could refuse his application. Where there is any defect in registering the memorial, the statute declares the proceeding null and void, so that the Court is doing no favor; therefore with respect to any other mode of enquiry, the only question is, whether the memorial is regular or not. And as to the first objection, that the warrant of attorney is not registered, it is not now necessary to give any opinion on that point (*a*): but with respect to the assignment not being registered, at the time of the enrollment *Grant* was only a trustee, and *Dallas* was the party who had the beneficial interest in the annuity. The statute requires, that whenever any step is to be taken respecting an annuity granted before

Ch. I. c. 8.

Vide ante 25.

What are such Deeds, &c.

fore the act passed, an enrollment must be made like to the memorial, which must be made at the making a new grant, that is, the state of the parties as they are at the time of the enrolment. That not having been done here, the consequence is, both the executions must be set aside. *Per Curiam*. Rule absolute.

Upon an application to the Court of *King's Bench*, for a rule to shew cause why the annuity deeds in the case which immediately follows, should not be delivered up to be cancelled, and all proceedings thereon set aside, because the assignment of the annuity was not registered as the act requires, the Counsel, who applied for the rule, said he relied upon the authority of the foregoing case of *Grant v. Foley*; and Mr. *J. Grose*, who was Counsel in that cause, said, that was a case in which the assignment existed at the time of the enrolment of the first deeds, and that that was the reason of the decision.

So it seems now quite settled, that the assignee of an annuity which was properly enrolled when it was first granted, need not enroll afresh for the sake of inserting his deed

deed in the memorial, before he proceeds against the grantor ; as the Court of King's Bench, after taking time to consider, held the act was fully complied with by registering a memorial of the original securities.

Ch. I. f. 2.

That question arose in the case of *Bromley*

Bromley v.
Greathead, Hill.
34 G. 3. B. R.
MSS.

v. Greathead, which was an application to the Court of King's Bench for a rule to shew cause why the annuity deeds should not be set aside, and all further proceedings thereon staid, because (amongst other reasons) the assignments of the annuities were not stated in the memorials. The facts of that case were as follows :—On the 12th of January, 1787, *Robert Anthony Bromley* in consideration of 150*l.* granted to *William Golightly* an annuity of 25*l.* and on the 28th of April, in the same year, he granted a like annuity of 25*l.* for a like consideration of 150*l.* to *William Prout* : some time afterwards *Bromley* sold another annuity of 50*l.* per annum to *Samuel Greathead* in consideration of 300*l.* and being willing that *Greathead* should be the only annuitant, he bought up the two former annuities of 25*l.* each, and on the 16th of May, 1788, *Golightly* and *Prout*

Ch. I, s. 2;

Prout executed the deeds of assignment, which transferred their annuities to *Samuel Greathead*, who paid 600*l.* as the consideration of the two last annuities, and was then possessed of an annuity to the amount of 100*l.* due from *Bromley*. The memorial of this annuity takes no notice of the assignment by *Golightly* and *Prout* to *Samuel Greathead*. About *April*, 1792, *Samuel Greathead* assigned the said annuity of 100*l.* unto *Thomas Peacock*, who issued out of the Court of King's Bench a writ of *feri facias* against *Bromley* for 1200*l.* debt; there was no memorial of this assignment, and the question was, Whether it was necessary that the assignee of an annuity well enrolled at first, must new enrol in order to insert his deed in the memorial before he can act against the grantor?

The Counsel applying for the rule contended, that although the original grant was properly registered, it was necessary to enrol afresh before any step could be taken by the assignee, and said that he relied on the case of *Grant v. Foley*, *ante* 38. But the Court intimated a very clear opinion that there was

was no necessity for a second enrolment in that case; and Lord *Kenyon*, Ch. J. upon granting the rule, said, he thought neither the words or the spirit of the act required it.

The point was admitted some few days after by the same Counsel, who said in Court, that he had found a case where the same point had been decided, and seeing the opinion of the Court, he abandoned that part of his rule; when the Court seemed to retain their former opinion.

So in the case of *Dixon v. Birch* and *Tyte*,
Dixon v. Birch,
 2 Hen. Bl. 307
 where a rule was granted to shew cause, why an indenture, bond, and warrant of attorney entered into to secure an annuity, should not be given up to be cancelled, and the money levied under an execution staid in the hands of the sheriff. The facts were simply these; *Birch* granted the annuity to *Dixon*, *Tyte* joining as a security, *Dixon* assigned the whole of it to *Cousins*, and the execution issued in the name of *Dixon*: there was a memorial of the original indenture, bond, and warrant, but none of the assignment from *Dixon to Cousins*, on the omission of

of which, the application to the Court was founded. But after the argument, the Court held, that as there was a memorial of the original securities enrolled, the object of the statute, which was the protection of the grantor, was fully complied with, and it was not necessary to enroll the assignment. Rule discharged.

But where a bond and a warrant of attorney to confess judgment were given to secure an annuity, although the judgment was entered up before the bond and warrant of attorney were registered, the Court of King's Bench held, that the judgment was not such an assurance as must be inserted in the memorial, because the annuity act was complied with by registering the bond and warrant of attorney, which were the securities given by the parties, and which the grantee relied on when the contract for the annuity was made.

However, if the judgment actually entered up had been the *only* security, the same Court intimated that in such case it would have come within the provisions of the act.

Those

Those points appear in the case of *Sher-
son* against *Oxlade*, where the defendant hav-
ing given the plaintiff a bond and warrant
of attorney to confess a judgment for secur-
ing an annuity, and the latter had entered
up judgment, but did not insert that judg-
ment in the memorial; on which ground a
rule was obtained to shew cause why the
judgment, and the execution thereon, should
not be set aside; and the Counsel, who
shewed cause, contended that the judgment
was such an assurance as ought to have been
registered. But,

Ch. I. c. 2.
Sherston v. Ox-
lade, 4 Term
Rep. 824.

Per Curiam.—This is not one of the
assurances which the Legislature intended
should be enrolled. The contract for
the annuity was made by giving the bond
and warrant of attorney to enter up judg-
ment. Those were the securities on which
the party relied; and the act is complied
with by registering all the securities given
by the parties. This will sufficiently an-
swer the purpose of notoriety; for every
person may see, by referring to the me-
morial, that the plaintiff was at liberty to
enter up judgment whenever he pleased.
If the memorial had been made imme-

E. diately

Ch. I. f. 3.

diately after the execution of the bond and warrant of attorney, the judgment could not have been inserted in it. Then, whether a matter shall, or shall not, be registered cannot depend on an act which is to be done afterwards. If indeed the only security had been a judgment actually entered up, *perhaps* it would have come within the provisions of the Act: but the assurances of this annuity were the bond and warrant of attorney. Rule discharged.

SECT. III.

Of the Enrolment of the Date of the Deeds.

17 G. 3. c. 26,
ante 9.

AND that every such memorial shall contain the day of the month, and the year, when the deed, &c. bears date, &c.] The memorial of every instrument, by which an annuity is secured, must contain the respective date of each instrument, otherwise the security will be void.

Downes v.
Parkhurst, Hil.
30 G. 3. cit. 2
Hen. Bl. 13.

That point was settled in the case of Downes against Parkhurst, where the Court of

of Common Pleas set aside a judgment to secure an annuity, because the date of the warrant of attorney was not stated in the memorial, as well as the date of the judgment.

Ch. 1. f. 3.

But the Court of King's Bench are said to have decided, that where there were several deeds given to secure an annuity, and the memorial contained the date of some of them only, such defect, in respect to those which omitted to state the date, did not vitiate those, of which the date was truly recited therein; because they thought the words of the act were confined to the particular deeds which do not recite their respective dates.

Thus where a bond and warrant of attorney to confess judgment thereon were given to secure an annuity, and the date of the latter was not set forth in the memorial, that Court is reported to have set aside the warrant of attorney *only*.

As appears from the case *ex parte Chester*, where *Chester* granted an annuity to one *Allison*, which was secured by a deed of assignment, a bond, and a warrant of attorney to confess judgment. No action was brought on the

Ex parte Chester
4 Term Rep.
694.

E 2 bond,

Of the Enrolment of

bond, nor was any judgment entered up under the warrant of attorney: but on the ground that the date of the warrant of attorney was not inserted in the memorial, a rule had been obtained from the Court of King's Bench, calling on *Allison* to shew cause why the deeds should not be set aside on account of that defect in the memorial.

The Counsel who shewed cause, said, that the warrant of attorney *only* ought to be set aside, as the words of the act were confined to the *particular* deed which was not truly set forth in the memorial, and that the Court had already decided that point in the case of *Willey v. Wheeler*. Tr. 31. G. 3. B. R.

The Court were of this opinion; observing that the word "*such*," in the Annuity Act confined the operation of that clause to the particular deed which was not truly recited in the memorial, and made the rule absolute as to the warrant of attorney *only*.

However, that case has been impeached, and a different construction is received, for it was lately decided in the Court of Chancery (*a*) that a memorial defective as to the date

(a) The Duke of Bolton v.

date of any of the securities, vitiates the whole transaction: Thus, where the memorial of an annuity secured by a deed of assignment, a bond, and warrant of attorney, to confess judgment thereon, omitted to state the dates of the bond and warrant of attorney, Lord *Loughborough*, Chancellor, held all the securities void; and in giving judgment, his Lordship said, "It has been said, that the Court of King's Bench had supposed that if there is a defect in one instrument, that will make only that particular defective instrument void, but that all the others might be used. The quotations from the Court of King's Bench turn out here just as they used in the Court of Common Pleas: they never stand an enquiry from the Court itself; I am now informed that no such idea was entertained by that Court. The courts of common law, which will upon their general jurisdiction enter into the validity of the warrant of attorney or judgment upon motion, in the particular application under the act, will only set aside the judgment, or execution, or vacate the warrant of attorney; but the jurisdiction does not extend to ordering the bond to be delivered up; and if ever done, it has been done inadvertently. The

E 3 first

Ch. I. l. 3.
 Williams et al.
 4 Bro. Ch. Ca.
 310. 2 Vez.
 Jun. 154,
 S. C.

Ch. I. f. 3.

first clause of the statute, is that which directs that a memorial shall be enrolled of every deed, bond, instrument, or other assurance, by which any annuity shall be granted. It is difficult to put it in more express terms, than that it shall contain them. All the different parts, the bond, warrant of attorney, the bond from the surety (*a*) all make but one assurance; the object is, that the assurance, and all the component parts, shall be set forth; therefore the expression is used clearly enough; and a memorial that does not contain every deed, bond, instrument, or other assurance, is not valid within the act. It proceeds to say, that otherwise every such deed, bond, instrument, or other assurance, by which an annuity is granted, shall be null and void to all intents and purposes.

The word "*such*" means every one by which an annuity is granted, and can refer to nothing else. The other construction will not agree with either the common, legal, or strict grammatical sense of the words. Upon that construction, for "*every*" you must substitute "*each*." They are not to be taken *singulariter*, but collectively; and otherwise the act would be defeated. Suppose the assurance was bond, warrant, and judgment, and

(*a*) See also the same bond decided ante 33.

and the bond was defectively set forth, shall you say the bond is bad, but the judgment good, and ought to be executed without the bond to support it? Suppose it had been money in the funds, and that the bond was defective, would you say that was void, but the demise was to stand? The plea to any of these instruments would be, that the memorial was not good to the whole; and though the Court will not proceed further than the application requires, yet there is no doubt in that or any other, that the consequences of the defect affects all the parts of the transaction, because all are to be taken together, and cannot be severed so as to give effect to one."

The same point was decided in *Hopkins* against *Waller* (a) where a judgment confessed on a bond, was set aside, because the warrant of attorney was not registered as well as the bond and judgment, upon the ground that whole transaction was vitiated by the omission. So in the case of *Davidson v. Foley* (b) and in *Hodges* against *Money* and *Bailey* (c) the Court held, that where there are several deeds securing the same annuity, they are to be considered as constituting only one assurance; consequently, if any part of that

E 4

assurance

(a) 4 Term Rep. 463.

(b) 2 Hen. Bl. 12

(c) 4 Term Rep. 500.

Ch. I. f. 3.

(a) 5 Term
Rep. 9.

assurance is defective, the whole transaction must fall to the ground. But in the case of *Saunders* against *Hardinge* (a) where one annuity was intended to be substituted for two several ones which had been before granted, to which the same person was entitled, one by assignment, and the other by a subsequent grant, and the consideration of the last grant, which consisted of the two former annuities, was not properly set forth in the memorial, Lord *Kenyon* Ch. J. said, "As the annuity secured by the bond, may, from the manner in which it is there registered, be different from the two several annuities mentioned in the deed-poll, this last judgment on the bond cannot be supported, but this will leave the other securities still in force."

(b) 6 Term
Rep. 471.

However, in *Hart* against *Lovelace* (b) where the dates of the bond and warrant of attorney were omitted, the Counsel argued that as the memorial referred to the bond and warrant of attorney as being particularly and respectively set forth in the said indenture therein referred to, by reference to which it would appear what were the dates of those instruments, and therefore that the maxim of law applied, *id certum est quod*

certum

Ch. I. f. 3.

certum reddi potest: But that, at any rate, if the bond and warrant of attorney were voidable for this omission, that would not affect the validity of the indenture: and that this was a *vexata questio*, as appeared from the several determinations of *ex parte Chester* on the one hand, and the *Duke of Bolton v. Williams* on the other (a) Lord Kenyon Ch. J.

(a) ante 52, 53.

said, "I am not prepared to say whether or not all the instruments given to secure an annuity must be set aside merely because one only is not properly registered. The cases on this subject are not reconcileable; but in the latest of them, Lord *Loughborough*, who drew the annuity act, decided in the Court of Chancery, that if any one of the deeds constituting the assurance for the annuity was not properly enrolled, all the instruments were void. We are not called upon now to determine that point: but the strong inclination of my opinion is, that any defect in the memorial of one of the deeds, will vitiate the whole assurance."

SECT. IV.

Of the Time allowed after the Execution of the Deeds, &c. before Enrolment.

17 G. 3. c. 26.
f. 1. ante 10.

A *Memorial of every deed, bond, &c. shall within twenty days of the execution of such deed, bond, &c. be enrolled, &c.]* This clause requiring the annuity deeds, &c. to be enrolled within twenty days of the execution, means within twenty days *exclusive* of the day on which the deeds are executed.

Ex parte Fallon
and uxor.
5 Term Rep.
283.

Thus in the case *ex parte Fallon* and wife, where the annuity was granted on the 6th of *June*, and a proper memorial of it was enrolled on the 26th of the same month; a rule had been obtained to shew cause, why the security and warrant of attorney should not be set aside, on the ground that the memorial was not registered within the time prescribed by the act.

The Counsel who shewed cause, contended, that one of the twenty days was to be reckoned

reckoned exclusive, and the other inclusive, according to the general mode of computing time; in which way of considering it, this memorial was registered within the time, the annuity having been granted on the 6th of June, and enrolled on the 26th of the same month. In *Pugh v. the Duke of Leeds* (a) the Court held, that the words "from the day of the date" were to be reckoned inclusive or exclusive, as would best effectuate the deed of the parties. And in 2 Inst. 674. concerning the enrolments of bargains and sales, which is required by 27 H. 8. c. 16. to be within six months next after the date, it was held, that the day of the date itself is to be taken exclusive; and it is there said, that "after the date," and, "and after the day of the date," is all one.

On the other hand it was insisted, that the distinction had been taken between the words "from the day of the date," and "from the execution" of the thing itself; that where the time is computed from the day of the date, that excludes that day; but where it is reckoned from the execution of any act, then the day on which it is executed is counted

(a) Cowp. 714.

Of the Time allowed after the

ed as one; otherwise the remainder of that day would be lost in the computation, and there can be no fraction of a day; that this distinction was recognized in the cases cited by Lord Mansfield in *Pugh v. the Duke of Leeds*, and in a later case of *Castle v. Burditt*, 3 Term Rep. 623.

Lord Kenyon, Ch. J.—No doubt can be entertained upon this objection. It would be straining the words to construe the twenty days all inclusively. Suppose the direction of the act had been to enrol the memorial within *one* day after the granting of the annuity, could it be pretended that that meant the same as if it were said, that it should be done on the *same* day on which the act was done? If not, neither can it be construed inclusively, where a greater number of days is allowed.

Asheburst J. concurred.

Buller J.—The authority of 2 Inst. 674, is decisive against the objection; both cases relate to conveyances, and they would both be subject to the same inconvenience, if the days were to be reckoned inclusively, namely, the

the rights of the parties would be divested; and wherever a right is to be divested, the time must be extended in order to support the transaction of the parties. Now here if we were to decide that the enrolment was not within the time allowed, it would divest the right of the grantee. The principle established in the case of *Pugh v. the Duke of Leeds* was, that the time should be taken exclusive or inclusive, as would best effectuate the act intended to be done by the parties.

Große J. agreed; and the rule was discharged.

If the twenty days for enrolling the memorial are elapsed, and the assignment of an annuity is void on that account, the assignee has no right to stand in the place of the original grantee (whom he has paid) for want of a good assignment, because it would be void at law. Upon an application of this sort in the case of the *Duke of Bolton* against *Williams (a)*, Lord *Loughborough*, Chancellor, said, "No person can claim in right of another grantee of an annuity, without

(a) 2 Vez. jun.
189.

Of the Time allowed after, &c.

without having that derived to him under a proper memorial registered, of that assignment being made; for it must appear by the registry, who is the real owner, and beneficially entitled to the annuity. The defect, therefore, of the memorial destroys his claim in their right, for he has not shewn it transmitted to him by any security the law allows. I cannot make a decree, that they, having received the money, should make good conveyances to him; certainly not upon this bill. If it stood over, I could not, for I should direct assignments, which, the moment they were made, would be void at law, and might be pleaded to, for the law directs the memorial to be enrolled within twenty days after the real transaction, and this would be a long time after it.

The case of *Hibbert v. Rolleston*, 3 Bro. Ch. Ca. upon Lord *Hawkebury's* Registry Act, 26 *Geo.* 3, c. 60, was mentioned in support of the case above cited, in which Lord *Tburlow* was of opinion, that equity would not relieve, where the bill of sale of a ship was void by the act for want of a recital of a certificate of the registry: there that act was compared to the annuity act;

act; and the argument was, that the policy of the act precluded relief in equity, as well as at law: and the medium of proof was, that upon the annuity act, that act put an end to it as well in equity as at law.

Ch. I. l. 5.

SECT. V.

Of describing and setting forth the Consideration in the Memorial.

THAT a memorial of every deed, &c. shall contain, &c. and set forth, &c. and the consideration or considerations of granting the same, &c.] The construction which has been put upon these words of this act is, that every thing which forms any part of the consideration for the annuity must be particularly specified in the memorial: and so desirous are the different Courts to give effect to every word of this act, in order to meet the mischiefs intended to be remedied by it, that they

17 G. 3. c. 26.
l. 1. ante 7.

Ch. I. f. 5.

they will set aside any deeds by which an annuity is meant to be secured, if the act is not strictly complied with in this respect.

Thus, where the consideration was stated to be in money, when in fact it was partly paid by a banker's cheque, and partly by a note payable at a future day, though discount was allowed on the note, and it was proved to have been paid when due, the Court of King's Bench set aside the annuity deeds, because, they said, the consideration was not sufficiently described, as the note and cheque ought to have been accurately set forth in the memorial, for that if no discount had been allowed, the true consideration would not appear on the memorial, and because if they were not paid, the proof that they were given for the annuity would otherwise be thrown upon the grantor.

Rumball v.
Murray,
3 Term Rep.
298.

That was the case of *Rumball* against *Murray* and another, where a rule had been obtained to shew cause, why the judgment entered on a bond and warrant of attorney given to secure an annuity, should not be set aside, and the bond and warrant of attorney delivered

delivered up to be cancelled, because the consideration was stated in the memorial to be *in money*, whereas it was paid *in notes*, the one a banker's check, the other a promissory note.

The Counsel who shewed cause against the rule, contended that notes when paid, were by the statute put on the same footing with money, and considered as such. Here every part of the consideration was really advanced; for the notes were paid when due, and a discount allowed on them. If notes, when paid, are not to be considered as money, the 4th section (a) of the annuity act would be altogether absurd; for though the preceding clause says that the consideration shall be in money only, yet the fourth enacts that if any part of it be in notes (which supposes that it may be so) which shall not be paid when due, all proceedings to recover the annuity shall be staid. If then part of the consideration may be in notes, provided they are paid when due, and the statute puts them both on the same footing, it is unnecessary to make any distinction between them in the memorial.

(a) Ante 10.

F

In

In support of the rule, the Counsel did not impeach the consideration, because it was paid in notes, but said that it had been already determined that it is necessary to state the notes in the memorial, in order that the Court might see that the full consideration had been really paid; otherwise some of the notes may be payable at a future day, and no allowance made, which would reduce the supposed consideration. The objection is, that the memorial does not truly describe the consideration as the act directs; and if this was held sufficient the act of parliament might be easily evaded.

Lord Kenyon, Ch. J.—As the annuity act is an extremely remedial law, the Court ought to give effect to every word of it, in order to meet the mischiefs intended to be remedied. And by giving effect to every word, the argument, which has been urged against the rule, is answered. The act directs, that in the memorial the consideration, *or considerations*, shall be inserted: now I do not know what meaning the latter word can have, unless every thing which forms any part of the consideration was to be particularly

larly specified. I agree with the construction put at the bar, that *money* is mentioned in the act as contra-distinguished from *goods*, and so far *notes*, when paid, are *money* within the meaning of the act; but still the dates and other particulars of those notes should be set out; otherwise the Court cannot see whether a full consideration for the annuity was or was not given; for if they were payable at a distant time, and no allowance made, the true consideration would not appear on the memorial.

Alsbury J. of the same opinion.

Buller J.—I think this point has been already determined. And I think the question arose soon after the passing the annuity act; in deciding which the Court had regard to the cases which had arisen before the act, on motions to set aside judgments on bonds and warrants of attorney to secure annuities on account of usurious considerations. They were frequently granted in consideration of notes payable at a distant day, which were taken as ready money, and therefore it was a species of usury; and in such cases the

F 2

Court

Ch. I. c. 5.

Court set the annuities aside. Upon that act it has been held, that the whole consideration must be set out in the memorial; and if any part of it consist in notes, they must be accurately set forth. It should appear that those identical notes were given for the annuity; because, in case they are not paid, the grantor would be entitled to set aside the annuity under another clause of the act (a), and it would by that means be ascertained that those were the notes given for the annuity; and if they are not set out, the burden of proof, that they were the consideration of the annuity, would be thrown on the grantor, which in many cases might be difficult.

(a) Sect. 4, ante
10.

Große J. of the same opinion.—Rule absolute.

So also the true consideration must be set forth in the memorial as it was really and bonâ fide paid; and there seems no difference in this respect whether the annuity was granted and the consideration paid *before* or *after* the annuity act passed, as it extends equally to both cases.

Thus

Consideration in the memorial.

69

Ch. I. s. 5.

Thus where the memorial of an annuity, granted previous to the act, contained the same consideration as the deeds did, and stated the whole to have been paid, whereas it appeared that part of the consideration had been retained to satisfy a year and a half accruing annuity, the Court of King's Bench held the memorial insufficient, because the transaction was not truly described according to the act.

Cox v. Wright,
E. 22 G. 3.
B. R. MSS.

That was the case of *Cox* against *Wright*, where a motion was made to set aside a nonsuit, obtained on the ground that an annuity, granted previous to the act, was not properly registered, as it contained the same description of the consideration as the deeds did, but not the true consideration as really paid. The transaction appeared to be this, 500*l.* were to be given for an annuity of 100*l.* whereas in fact only 350*l.* were really paid, the remaining 150*l.* being detained by the grantee for a year and a half accruing annuity. The deeds and memorial stated that 500*l.* were paid as the consideration; and the single question was,—Whether it was a proper memorial according to the act,

F 3 which

which required that the true consideration should be set forth, and not that in the deed?

Willes J.—The statute was enacted to prevent fraud in the securities for annuities; this memorial states that 500*l.* were given as the consideration, and it is so stated in the deeds, whereas it appears that only 350*l.* were in fact paid, and that the remaining 150*l.* were detained for a year and a half accruing annuity, so that in fact the grantee has detained a sum out of the consideration in his own hands, for which he was receiving interest, before any part of the annuity became due; therefore, as the memorial does ~~not~~ disclose the true receipt, it is within the words of the statute,—“Not truly described.”

Asbburst J. concurred.

Buller J.—The grantee has the money at once, from which he derives interest, and might as well detain 450*l.* of it. There could be no doubt, if the annuity had been granted *after* the act passed, but that the true

Consideration in the Memorial.

71

true consideration must have been stated *as paid*; there seems a jumble about process *before and after* the passing the annuity act; but the Legislature seemed to mean that the true consideration should be equally stated for annuities granted *before* the act and *after*; consequently the non-suit must stand.

Ch. I. s. 5.

So in the case of *Fenner against Evans*, where an annuity had been granted by the plaintiff to the defendant, before the passing of the annuity act, the consideration of which was enrolled in the memorial to be 1000*l.* but in fact the plaintiff had received only 700*l.* in money, and a respondentia bond for 27*l.* and there was a deduction of 2*g**l.* for law charges; the rule to set aside a *scire facias*, and all the subsequent proceedings, was made absolute, because the real consideration of the annuity did not appear in the memorial.

Fenner v.
Evans, 1 Term
Rep. 267.

So where part of the consideration of an annuity is paid over by the grantee to a third person, with the consent of the grantor, or is accounted for to the grantor, by a note from a third person, the whole of the trans-

F 4

action

action must be stated in the memorial; and if in either of those cases it is stated in the memorial that the whole consideration was paid in money, the annuity deeds will be set aside.

Watts v.
Millard and al.
E. 34. G. 2.
B. R. MSS.
5 Term Rep.
598, S. C.

That was the case of *Watts v. Millard* and another, where an annuity of 30*l.* had been granted to the plaintiff in consideration of 180*l.* procured by one *Mordaunt Atkinson* for the defendant, and secured by a warrant of attorney, an assignment of a salary of 60*l.* per annum, and a judgment of 300*l.* The affidavits stated, that only 130*l.* were paid to the defendant, and that the remaining 50*l.* were retained by *Watts*, with *Millard's* consent, in part payment of a demand he had on *Atkinson*, who was the attorney for both parties; and that the 50*l.* was accounted for by a receipt from *Watts* to *Millard* for that sum on account of *Atkinson*, and a promissory note from *Atkinson* to *Millard* for the same. The memorial stated the warrant of attorney, the judgment, and the assignment of the salary, but described the consideration of 180*l.* as having been paid to *Millard*.

Upon

Upon a rule calling on the plaintiff to shew cause why those securities should not be given up, and the annuity be set aside, on account of several objections to the manner in which the consideration was described, and because the memorial did not state how the plaintiff was intitled to the salary, but described it merely in general terms.

The Court held, that all the terms made by the grantor of the annuity as the consideration for his granting it, ought to be specifically stated in the memorial, that in this case the whole consideration was stated as being paid, whereas only 13*l.* out of the 18*l.* the money agreed for, was paid. Moreover, that the receipt of 50*l.* admitted by the grantor as money for another person, made the annuity void on another ground, namely, that it was retained on a pretence within the 4th section of the act, ante 10; but that the other objection was alone decisive, for as the retaining the 50*l.* for *Atkinson* was part of the terms of the contract, it should have been stated in the memorial; moreover, it had been several times decided, that where the grantor at the time of the treaty agreed to pay over part of the consideration, it should be

Ch. t. c. s.

be truly set forth in the memorial. But as to the other objection the Court said, that provided the plaintiff had such a salary of that amount, it was sufficiently described; and the rule was made absolute merely on account of the insufficient description of the consideration.

So in another case the Court held, that if the memorial did not contain every clause in the deeds which formed any part of the consideration, the objection could not be got over, and the annuity must necessarily be void. In this instance a clause of redemption, which was indorsed on the back of the deed, was not stated in the memorial, which the Court seemed to think a complete objection to the validity of the annuity; and upon terms being proposed, the Counsel for the defendant declined arguing the point, because the whole Court had intimated so decided an opinion, on account of the omission.

Sawyer v.
Bunce and al.
E. 35. G. 3.
B. R. MSS.

That was the case of *Sawyer* against *Bunce* and others, where a rule had been obtained, calling on *Sawyer*, *Mary Neale*, and others, to shew cause why an indenture of the 13th of *May* 1786, executed by the defendant

defendant and his wife, and the several bonds and warrants of attorney of the same date also executed by the defendants for securing the payment of two annuities of 167*l.* and 100*l.* should not be delivered up to be cancelled, the same being void: also why the plaintiffs and their trustees should not deliver up all deeds and papers, in their or either of their custody, relative to the said annuities; and that all proceedings under the said indenture of the 13th of *May*, and the said bonds respectively, be in the mean time staid on account of the memorial being defective.

The affidavits of the defendants stated, that in *April* 1786, deeds were put into the hands of *John Joseph Powell*, as securities for money he was to procure, who was also told, that one of the defendants and *Catherine* his wife, was entitled to an annuity of 300*l.* during her life, granted and secured to her before her inter-marriage, 100*l.* of which was secured to her separate use: *Powell* was to procure 1600*l.* for two annuities, to be secured by an assignment of a due portion of the said annuity of 300*l.* The said

said defendant and his wife *Catherine* sold to *William Sawyer* one annuity of 167*l.* for the sum of 1000*l.* to be paid to the said defendant and his wife by the plaintiff; and also another annuity of 100*l.* unto *Mr. Thomas Neale* for 600*l.* to be paid to defendant and his wife by *Neale*; and that such annuities should be respectively granted for the life of defendant and his wife, and should be secured by the said annuity of 300*l.* and by bonds and warrants of attorney to enter up judgments thereon to be executed by the defendant and his wife and *Neale*. The affidavits further stated, that it was expressly agreed between all the parties, that the grantors should be at liberty to repurchase the said annuities at any time upon the payment of such sum as should be afterwards named and agreed upon between the parties. It was further stated, that the grantors would not have contracted for the sale of any annuity to be secured as aforesaid, nor would *Catherine*, the wife of one of the defendants, have joined in securing it, without an express stipulation for the redemption thereof, and that the liberty to redeem was to the parties a material part of the granting such annuities.

The

The affidavits further stated, that a memorandum under the hands and seals of *Sawyer* and *Neale*, and executed by them respectively, was indorsed on the back of the indenture of the 13th of *May* 1786, bearing even date with it, whereby it was stated, that after the execution of the within written indenture, the said defendant and his wife *Catherine* having expressed a desire, that he or his said wife, or either of them, or their heirs, or executors, or administrators might be permitted to repurchase of the said *Thomas Neale* and *Sawyer* the said annuities of 100*l.* and 167*l.* at the price of 650*l.* to be paid to the said *Thomas Neale*, and 1083*l.* 10*s.* to *Sawyer*, at any time when convenient, to which they agreed, and covenanted severally to abide by the agreement after fourteen days notice in writing given to them or to *Powell*, and that the said annuity of 300*l.* should be then re-conveyed to the said defendant and his wife, upon payment by them of the charge of such repurchase and reconveyance.

Several objections appeared upon the full statement of this transaction with respect to

to the memorial, as registered, such as there being two distinct purchases with only one memorial, the deeds mistated, and some of the trusts omitted; but the *Court* seemed so completely to have made up their minds, that they were unwilling to hear any argument, and it was to the omission of the clause of redemption that they confined all their attention; and Mr. J. *Grose* asked the plaintiff's Counsel, if it was possible to get over the objection, that being a material part of the consideration? when, upon no answer being given, and the Counsel on both sides acquiescing in the terms proposed by Lord *Kenyon* Ch. J. the *Court* ordered the rule to be drawn up as follows: "The Master to take an account of what is due from the defendant to the plaintiff upon the annuity in question, for the principal purchase money of the said annuity advanced by the plaintiff to the defendant, and for interest thereon at the rate of 5*l.* per cent. per annum, from the time of the said principal money being advanced to the defendant, and for the money actually paid by the plaintiff for insurance of the life of *Catherine Bunce*, the defendant's wife, and also to take an account of all monies received by

by the plaintiff on account of the said annuity, and to make rests upon the payment of each sum of money paid by the plaintiff for such insurance, and also upon the payment of each sum of money by the defendant on account of the said annuity, and to compute interest upon every such payment by either party at the rate of 5*l.* per cent. per annum, and to ascertain upon the total of each side of the said account what sum of money (if any) is due from the defendants to the plaintiff for the balance of such accounts, and that thereupon and upon payment of what (if any thing) the Master shall find to be due from the defendant to the plaintiff, the said annuities to be set aside, and that the plaintiff shall deliver up to the defendant all deeds, papers, and writings in custody of the plaintiff, executed or delivered by the defendant to the plaintiff for securing the annuities aforesaid.

So in another case it was held, that the memorial ought to contain an account of the whole proceedings relative to the consideration, the real amount of it, to whom and by whom, and on whose behalf it was paid, the actual mode and manner in which it was paid

Of describing and setting forth the

Ch. I. c. 5.

paid, and the names of all the parties concerned in the payment of it, so that upon reading the memorial, a full, clear, and true disclosure of the whole transaction may appear.

Duke of Bolton
v. Williams,
2 Vez Jun.
139. 4. Bro.
Ch. Ca. 310.
8. C.

Those points were decided in the case of the Duke of Bolton against *Williams*, where *Mrs. Williams* was entitled to a rent-charge of 300*l.* a year for her life, charged on an estate, of which the Duke of Bolton was tenant for life, by grant of the late Duke, in trust for her separate use. She sold to *Ardesoif* one annuity of 100*l.* and another of 60*l.* and to *Dubourg* an annuity of 90*l.* all which annuities were secured by assignment of her rent-charge. In 1781, by deed between *Creswell*, *Mrs. Williams*, *Ardesoif*, and *Dubourg*, *Mrs. Williams* agreed to sell an annuity of 250*l.* for her life to *Creswell*; and to enable her to do so, *Ardesoif* and *Dubourg* agreed to assign their annuities. For this purpose she assigned her rent-charge to *Creswell*, in consideration of 2000*l.* on trust to retain for himself 250*l.* a year during her life, and to pay the residue to her. At the time of execution, *Ardesoif* received 1126*l.* 7*s.* part of the purchase money paid by *Creswell*, in satisfaction of his two annuities, and *Dubourg* received

received 534*l.* part of the same purchase money, in satisfaction of his annuity. Of the remainder of the purchase money, 15*l.* was paid to *Balfour*, in consideration of his trouble in negotiating the agreement with *Ardejoif*, which payment *Ardejoif* insisted on previous to his execution, and 31*l.* 10*s.* was paid to *Palmer*, *Creswell*'s attorney, for the expences of the transaction. After these deductions, the remainder of the 2000*l.* was received by Mrs. *Williams*; but a farther demand of 80*l.* was made at the same time by *Powell*, the nature of which was not explained farther than by evidence, that Mrs. *Williams* said she was willing to pay it, as she had employed him, and that he went out of the room, and another person meanly dressed was introduced, to whom she paid that sum. The whole 2000*l.* was paid on this occasion by *Jenkins*, agent for *Creswell*. The memorial of this annuity registered under the act, stated it to be a grant of an annuity of 250*l.* for the life of Mrs. *Williams*, secured by assignment of the rent-charge; and stated the consideration thus: "In consideration of 1126*l.* 7*s.* paid to *Ardejoif*, and 534*l.* paid to *Dubourg*; both which sums were paid by the

the order of *Mary Charlotte Williams*, which make the sum of 2000*l.* and were paid by *Creswell* in notes of the bank of *England*." By the grants of the annuities to *Ardeois* and *Dubourg*, in case of the death of Mrs. *Williams* between the days of payment, they were to receive a proportionable share of the next quarter; but the grant to *Creswell* did not contain such a stipulation.

In 1782, Mrs. *Williams* agreed to sell *Sampson* an annuity of 42*l.* 10*s.* for her life; for which purpose, in consideration of 297*l.* 10*s.* she assigned to *Sampson* her rent-charge, upon trust to retain every year, during her life, 42*l.* 10*s.* and 7*l.* 10*s.* as a poundage, being at the rate of sixpence in the pound on the whole rent-charge, for his trouble in receiving it from the Duke of *Belton*, or Mrs. *Williams*'s trustee, and all costs and charges, to which he should be put on account of it, and to pay the residue to Mrs. *Williams*, for her own benefit. According to a receipt of *Sampson*'s produced in evidence, the sum for poundage was considered as part of the annuity, the receipt being for 12*l.* 10*s.* expressly as one quarter of the annuity. This an-

nuity was farther secured by bond and warrant of attorney by *Bindley*. The memorial registered according to the act, stated this annuity to be 4*l.* 10*s.* a year, and the consideration 29*l.* 10*s.* paid in notes of the bank of *England*. It also stated, that the annuity was secured by bond and warrant of attorney; but did not mention by whom they were executed, the dates, nor the consideration; nor was *Law* trustee of the rent-charge for Mrs. *Williams*, mentioned as trustee for *Sampson*.

At the time of these transactions the husband of Mrs. *Williams* was out of the kingdom, and he still continues abroad. Mrs. *Williams* filed a bill to have these annuities set aside, on the ground, that she was not competent as a *Feme Covert* to make assignments of this fund, which was meant as a personal provision for her, payable from time to time. That bill was dismissed. Afterwards objections to the memorials being discovered, Mrs. *Williams* demanded the arrears of her rent-charge, and gave notice to the Duke of *Bedford* not to pay to the executors of *Creswell* and *Sampson*. Those

Ch. I. f. 5.

executors made the same demand, and gave him notice not to pay to her, upon which the Duke filed two bills of interpleader. Mrs. *Williams* by her answer offered to account for the purchase money, deducting what the annuitants had received. The case

was argued before Lord *Thurlow*, July 22, 1791, who, just before his resignation, decreed, "That both annuities were void for want of enrolment of proper memorials; that the arrears should be paid to Mrs. *Williams*, and also the growing payments from time to time, as they should become due; and a perpetual injunction was granted against the executors." From this decree there was a petition of rehearing in both causes. The objections to the memorials of these annuities were; that the consideration was not truly stated; as it was impossible that those broken sums could have been paid in bank notes; that the consideration of *Creswell's* annuity was not paid by him, as stated in the memorial, but by *Jenkins*; and that Mrs. *Williams* did not receive so much as the sum stated; that *Sampson's* annuity was not 42*l.* 10*s.* but 50*l.*; that the trustee of Mrs. *Williams's* rent-charge was not stated to be trustee for

Sampson

Sampson pro tanto; and that the bond and warrant of attorney were not sufficiently described. A second ground of objection to the decree was, that supposing the annuities void, *Mrs. Williams* ought to have been compelled to make good the offer in her answer to refund the purchase money with interest, out of her separate property. Another question was raised by the executors of *Creswell*; who insisted, that if the deed of 1781 was void, the original annuities to *Ardejoif* and *Dubourg* did not pass by it, but continued in them; and that *Creswell* having paid them, had a right to stand in their place.

It was argued, that it is not important to this question, whether the bond and warrant of attorney are sufficiently described in the memorial or not, for it is now determined, that though there be not a correct memorial of a collateral security, that will not affect those instruments, of which a correct memorial is registered.

That it is now settled by the whole current of cases, though at first, in the early cases

Ch. I. f. 5.

upon this ~~a~~, the contrary was held. The last cases are *Hopkins v. Waller*, ante 25, and *ex parte Chester*, 4 Term Rep. 694. That the deed must be avoided by the memorial of the deed itself. Suppose a collateral security was taken afterwards; could it be argued, that the annuity was good for part of the time, and bad for the rest? The act does not say, that if there is an incorrect memorial of one out of twenty deeds, all are to be void; but only that such deed, of which there is not a correct memorial, shall be void.

Lord *Loughborough*, Chancellor. The last case, that I remember, which was upon Lord *Foley's* annuities, was a determination after argument, that the warrant of attorney not being distinctly set out, vitiated the whole memorial; ante 28. Suppose an annuity secured on land, and that the bond was omitted, could you have proceeded upon the indenture? All the different instruments composing the security make but one security. What is quoted as the opinion of the Court of *King's Bench* is quite new to me. I take it, nothing more could have been decided there, but that the Court set aside the

the proceeding. There is no case in a Court of Law, in which the order goes farther upon the motion made; which is to set aside either the judgment or execution; consequently upon either the judgment of the Court is, that the instrument goes for nothing; but upon an application of that kind under the annuity act, the Court of Law does not order it to be given up. The last case, I believe, was in the Court of *Exchequer*; and that Court, after some consideration, came to what I take to have been the opinion of the other Courts, and am sure was that of the Court of *Common Pleas*. But there is another objection from the advantage this annuitant was to have as poundage upon advancement of the rent-charge he was to receive. This annuity by that was 50*l.* instead of 42*l.* 10*s.*

It was further argued by Counsel, that when the Court granted a perpetual injunction against the executors, that ought to have been founded upon this at least, that they should be repaid with interest, what was actually advanced, deducting what was received under the annuity, according to the offer made by

Of describing and setting forth the

the answer. That payment ought to have been provided for by the decrees, out of her separate property; that, if money was lent to a married woman, having separate estate, that is a debt for which a bill in equity may be filed. That *Creswell* had nothing to do with the bargain for dividing the money. That it was doubtful whether the assignment of an annuity required any memorial. That the assignments by *Ardesoif* and *Dubourg* make a distinction between this case and *Sampson's*. The original annuities to them are good; and if the deed of 1781 is an absolute nullity, that void deed could not convey their interests, which still continue in them. That if this annuity is void, the executrix is entitled to call on *Ardesoif* and *Dubourg* to let her make use of their names, and stand in their places. That in conscience she ought to return the purchase money, with interest, as it is determined at law that the party shall recover the money paid, if the annuity is defeated; it seems to follow, that where the only right to the annuity is equitable, as in this instance, and the Court of equity decides against the sale of that annuity, the Court will compel the party to restore

store the money. That the poundage *Sampson* was to have was no continuing payment, but might be put an end to; and if his annuity was put an end to, still the charge as a compensation for his trouble in receiving and paying over her rent-charge, would subsist as a collateral and distinct matter. That in the case of *Saunders v. Hardinge*, post, there is another case to the same effect as *ex parte Cheffer* (a); in which upon the application as to one of the securities, Lord *Kenyon* said, "the parties are well off, as they had several others." The rest (b) therefore were considered good. That as to *Creswell*, the objection that the money was paid by *Jenkins*, would extend to the case of a mere servant sent with the cash from a banker's; and in that case it might as well be objected, that the servant's name was not mentioned. *Jenkins* was only agent, and there is no doubt that *Creswell* advanced the money. That the meaning of the act is, that the real party should appear, not that the name of a servant, who took the cash from a banker's, should be inferred. No person was present for *Creswell*, when that payment was made to *Powell*. *Balfour* was concerned for *Ar-*

Ch. I. f. 5.

(a) 4 Term Rep. 694.

(b) Sed vide ante 33.

dejoif

Ch. I. f. 5.

devis, who concurred with him in that demand, and would not execute till it was paid. *Palmer* was the attorney whom *Creswell* chose to employ, to see that his security was good. The payment to him comes only to this, that one of the terms of their agreement was, that the expence of preparing the conveyance of the annuity should come out of the purchase-money. This decree in effect says, though the deed to *Creswell* shall not make good his annuity, yet it shall destroy the other's. Mrs. *Williams* insisting that the annuity is void, gives an equitable right to the consideration.

Lord Loughborough's
decree upon a
re-hearing.

Lord Chancellor,—I suppose the ground of the perpetual injunction, was, that if this annuity was void on account of the defects in the memorial, there was no lien at all on the property Mrs. *Williams* possessed. The transaction therefore as an assignment of her interest in the rent-charge is totally gone. It is true, the money advanced at the time of taking that security is a debt, and may be recovered in an action; but money lent to a married woman, cannot be so recovered: therefore the whole security being void at law,

law, and there being no right at law to sue, this court will not relieve. You must first make out a debt at law, if you can establish it at law, this Court will give access to the fund. You must bring your action upon the contract. Where a married woman has charged her separate estate, a Court of equity, as against the trustee, will help you to recover; but is there any instance where a debt has been incurred by a married woman, and a Court of Equity has given it out of that money? *Briscoe v. Kennedy*, 2 Vez. 190, goes no further than this,—that a woman having separate property, may, with her husband, bind that property. It is very material for you to contend, if you can, that an assignment of an annuity is not to be registered. Is it not a deed whereby an annuity is granted for one or more lives? No doubt *Mrs. Williams* is liable in respect of any other separate property from any other quarter; there have been many actions of the kind lately against *Lady* ——. The Court of Common Pleas held, that where an action is brought against a woman apart from her husband, but not separated by deed or sentence, it could not be maintained merely upon

on the form, because the husband was not a party; but where they are separated by deed or sentence, the husband need not be a party: that objection in the Court of King's Bench goes only upon the wife being sued as a *feme sole* without her husband. The action is brought against the husband and wife, and the judgment is against the separate property of the wife. In all those cases where a married woman gives her separate property as a joint security with her husband, the Court considers it as operating as an appointment of her separate property. Where there is an assignment of her property in the hands of trustees, the person having the right will come here for the execution of the trust: but can a general creditor of a married woman come here to have his debt satisfied out of that property? if that was the doctrine, it must have occurred many times. In case of separation, the creditor would come into this court directly against the trustees, to establish the demand in a Court of Equity, instead of going to law. Upon this case, Mrs. *Williams* is in the situation of a *feme sole*. She is so stated upon the pleadings and the deeds, that she

is

is a married woman entitled to an annuity, and her husband abroad. Any tradesman might bring an action against her. Her disposition is valid to the extent of her power; but does that make her general dealings the subject of a suit in equity, where the law does not entitle them to recover? It is a new head of equity to say, "I have dealt as the law will not permit, therefore relieve me, because I cannot be relieved at law."

Through the course of these causes, though I have paid great attention to the arguments from the respect I shall always pay to the opinion of Counsel, I have had no doubt in my own mind that the decree is right. These bills are bills of interpleader, brought by the Duke of *Bolton*, whose estate is charged with a legal rent-charge, vested in *Law*, as trustee for Mrs. *Williams*, for her separate use, by the late Duke. The subject therefore, that makes it necessary for the plaintiff to come here, is equitable estate certainly; but when that proposition is stated, all that remains is perfectly legal. All the questions that were debated, are strictly legal. The subject matter of the suit is an equitable interest in the Duke to come here,
as

as being liable to be called on by Mrs. *Williams*, as *cestui que trust*, and also by the persons to whom she has made assignments, those persons setting up claims against her, and each party calling on the Duke not to pay the other. It is necessary for him, in that situation, to come here to determine whether her assignments are such as ought to prevent her from receiving that, to which otherwise she is clearly entitled. The position in which his right puts the parties, is, that as plaintiffs they must make out their case to entitle themselves to receive this property: Mrs. *Williams*'s case is soon made out, for by the trusts of the deed, if no other person is entitled to the growing payments, she is. The representatives of *Creswell* claim under a supposed purchase of 25*ol.* a year in 1781, to which Mrs. *Williams* and others are parties. He claims upon it as a fair annuity; and so by law is obliged to support the grant of that annuity, to bring it into action, either in equity or at law, by having complied with the conditions which the law has imposed, and must therefore shew a due memorial registered. The memorial states the transaction very shortly and concisely, by

recital

recital of the indenture of 1781, and of the parties by which it witnessed that Mrs. *Williams*, in consideration of 1126*l.* 7*s.* paid to *Ardeois*, and 534*l.* paid to *Dubourg*; both which sums were paid by the order of Mrs. *Williams*; and of 339*l.* 13*s.* paid to her; which sums make the sum of 2000*l.* and were paid by *Creswell*, in notes of the Bank of England, did grant an annuity of 250*l.* &c. There is a clear objection on the statute, which requires, for a very necessary purpose, that the memorial shall set forth the consideration fully and truly, and by whom, and on whose behalf, that consideration was paid. I do not agree with the argument, that the omission of the actual mode, in which the payment was made, is mere matter of circumstance. Circumstances of as little moment, as the names of the witnesses, &c. are required in other parts of the act. The object of the Legislature was, that the whole transaction, the names of all the parties concerned, of whom enquiry might be made, or who might be called on as witnesses, should be inserted. The real transaction seems to have been this: There were three prior annuities granted less advantageous than this to *Creswell*.

Creswell. Those annuities were to be in truth purchased by *Creswell*, and confirmed by *Mrs. Williams*, in consideration of his advancing a further sum to her, than had formed the consideration of them. Therefore the deed contains assignments by *Ardesoif* of his interest, and by *Dubourg* of his, and a farther assignment by her of the rent-charge of 300*l.* to produce one consolidated annuity of 250*l.* The manner in which the consideration appears to have been paid, in fact was, that *Ardesoif* was paid all that he claimed; so was *Dubourg*; but *Mrs. Williams*, instead of being paid the sum of 339*l.* 13*s.* stated to have been paid to her, received beneficially a much less sum; 80*l.* having been at the time dissipated in the expences by the payment to *Powell*, 15*l.* being paid to *Balfour*, and 31*l.* 10*s.* to *Palmer*, upon a bill then produced. There is no evidence of any terms of the agreement with *Creswell*, except what the deed indicates. That indicates, that the 2000*l.* was to be paid for the benefit of *Mrs. Williams*, as I have stated. The memorial says, it was so paid. Is it possible, upon inspection of the memorial, to conceive that there existed three prior annuities

nuities, the purchase of which was the consideration of the deed, or to conceive upon what ground those payments were made? Instead of being truly, it is falsely set forth. The money was not in truth paid by *Creswell*, but by an agent, whose name ought to have been set forth. It should have stated, that it was paid by *Jenkins*, and on behalf of *Creswell*. If this can stand, it would be necessary, immediately to repeal the act; for the consequence will be, that the memorial, which, it is obvious, should serve as a check on these transactions, would be a cover to them, and would be deemed to give additional validity, instead of checking them, and bringing all the circumstances to light. Besides this, another clause in the statute is directly applicable: The original deed we know nothing of, but from the deed itself. How has that sum of 2000*l.* been paid to her use? Just at the time, at the moment the money was paying, *Palmer* brings his bill. There is no evidence at all, that it was part of the agreement, that *Creswell's* attorney should be paid by her. On inspecting the bill, the charges seem proper; but they are against *Creswell*. In the course of this

H business,

business, the money he has received is to the use of *Creswell*. Though that sum cannot be said to be literally retained by *Creswell*, yet it was deducted out of the sum, which upon the face of the transaction was all to be applied to her use. Suppose it fair, and that there was no sudden imposition, but that it was part of the agreement, it ought to be stated; for instead of receiving 2000*l.* there is a deduction of what in the ordinary course of the transaction would fall on *Creswell*. Therefore the proposition in the decree is true, that the deed is void for want of enrolment of a proper memorial.

As to *Sampson's* annuity, the memorial describes it as 4*l.* 10*s.* There was a collateral security by bond and warrant of attorney of *Bindley*. They are mentioned in the memorial; but so defectively, that it is no memorial at all. It has been said, that the Court of King's Bench had supposed, that if there is a defect in one instrument, that will make only that particular defective instrument void (*a*), but that all the others might be used. The quotations from the Court of King's Bench turn out here just as they used in the Court of Common Pleas.

They

(a) See ante 51

Consideration in the memorial.

99

They never stand an enquiry from the Court itself. I am now informed, that no such idea was ever entertained by that Court. The Courts of common law, which will upon their general jurisdiction enter into the validity of the warrant of attorney, or judgment upon motion (*a*), in the particular application under the act, will only set aside the judgment, or execution, or vacate the warrant of attorney: but the jurisdiction does not extend to ordering the bond to be delivered up; and if ever done, it has been done inadvertently. The first clause of the statute is that which directs, that a memorial shall be enrolled of every deed, bond, instrument, or other assurance, by which any annuity shall be granted. It is difficult to put it in more express terms, than that it shall contain them. All the different parts, the bond, warrant of attorney, the bond from the surety (*b*), all make but one assurance. The object is, that the assurance, and all the component parts, shall be set forth; therefore the expression is used clearly enough; and a memorial that does not contain every deed, bond, instrument, or other assurance, is not valid within the act. It proceeds to say, that

H 2 other-

Ch. I. f. 5.

(*a*) See 4 Term Rep. 695, note 8, and post section 17 of this chapter.

(*b*) Vide ante 33

otherwise every such deed, bond, instrument, or other assurance, by which an annuity is granted, shall be null and void to all intents and purposes. The word "*such*" means every one, by which an annuity is granted, and can refer to nothing else. The other construction will not agree with either the common, legal, or strict grammatical sense of the words. Upon that construction for "*every*" you must substitute "*each*." They are not to be taken *singularim*, but collectively; and otherwise the act would be defeated. Suppose the assurance was a bond, warrant, and judgment, and that the bond was defectively set forth; shall you say, the bond is bad, but the judgment good, and ought to be executed without the bond to support it? Suppose it had been money in the funds, and that the bond was defective; would you say that was void, but the demise was to stand? The plea to any of these instruments would be, that the memorial was not good of the whole; and though the Court will not proceed farther than the application requires, yet there is no doubt in that Court, or any other, that the consequence of the defect affects all the parts of the transaction, because

because all are to be taken together, and cannot be severed so as to give effect to one. But it is unnecessary as to this annuity to go so far; for his real annuity is 50*l.* a year, not 42*l.* 10*s.* for having acquired the whole interest in the rent-charge of 300*l.* a year, which he must hold as long as his annuity, he will receive 7*l.* 10*s.* as an allowance of expence in the pound for trouble. It is ridiculous to suppose he was to receive the 250*l.* a year payable to other parties, and that she was to pay him for that. It is a mere shift clearly. Upon the whole the decree ought to be affirmed.

So in another case it was decided, that the memorial should state the precise manner in which the consideration was paid, in order to comply with the requisites of the act; and accordingly where the memorial stated *generally* that the annuity was granted in consideration of a particular sum paid by the grantee to the grantor, and it afterwards appeared that part of the money had been previously lent to him, for which promissory notes had been given, and that the sum was completed only at the time of granting the

H 3 annuity,

Of describing and setting forth the

Ch. I. 6. 5.

annuity, and that the notes were then given up, the Court of Common Pleas set aside the securities, because, they said, the consideration was not sufficiently described.

Kirkman v.

Price,

1 Hen. Bl. 309.

That was the case of *Kirkman* against *Price*, where a rule had been obtained to shew cause why a bond, warrant of attorney, and deed of assignment of the defendant's pay as a lieutenant in the navy, to secure an annuity, should not be given up to be cancelled, on the ground that the consideration of the annuity was not sufficiently set forth in the memorial, which stated generally "the annuity to have been granted in consideration of 160*l.* paid by the plaintiff to the defendant," but it appeared upon affidavit, that 99*l.* 14*s.* 6*d.* of the money had been previously lent by the plaintiff, for which the defendant gave several promissory notes, and that the plaintiff at the time of granting the annuity, advanced only so much money as remained to complete the 160*l.* allowing twelve guineas for the expences of the deeds, but gave up the notes.

The Counsel in shewing cause, said that the consideration was sufficiently set forth,

as

Consideration in the Memorial.

103

as the whole money had in fact been received by the defendant, though at different times. But the *Court* held clearly, that the particulars of the consideration were not sufficiently specified, the words of the statute being that "the consideration should be *fully* and *truly* set forth and described" (*a*), and therefore made the rule absolute.

Ch. I. f. 5.

~

(a) Sect. 3. ante 9

So in the case of *Shove* against *Webb*, where the defendant executed a bond and warrant of attorney to confess judgment thereon, and an assignment of his half-pay as an ensign in the army, as a collateral security for an annuity of 25*l.* a year during his life, the deeds were set aside by the Court of Common Pleas, because the memorial stated the consideration to be the sum of 118*l.* 17*s.* 3*d.* paid in money, whereas only 71*l.* 17*s.* 6*d.* was paid by the plaintiff to the defendant, in cash, at the time of granting the annuity, and the remaining 46*l.* 19*s.* 9*d.* was a debt due from the defendant to the plaintiff for goods previously sold by the plaintiff to him, which ought to have been so specified in the memorial.

Shove v. Webb,
1 Term Rep.
732.

H 4

So

Of describing and setting forth the

Ch. I. f. 5.
 Jaques v. Withy
 1 Term Rep.
 557.

So also in the case of *Jaques* against *Withy*, the Court of Common Pleas set aside the securities for an annuity of 50*l.* a-year, because the memorial stated the consideration to be 340*l.* 10*s.* paid to the plaintiff by the defendant, whereas in fact the true consideration was a judgment recovered against the plaintiff in the Court of King's Bench for that sum.

Walsburn v.
 Birch, 5 Term
 Rep. 471.

The same point was decided in the case of *Walsburn* against *Birch*, where the Court of King's Bench set aside the securities for an annuity, because the memorial stated that the consideration was so much in money paid, when the real consideration was part in money paid at the time, and the giving up of a former annuity.

The facts of that case were as follows:
 On the 3d of *February*, 1786, *Richard Smith* and *George Birch* executed a bond in a penal sum to *William Norton*, conditioned for the payment of 100*l.* a year, during their natural lives, and the life of the survivor of them, and at the same time gave a warrant of attorney

Ch. I. l. 5.

torney to confels judgment thereon. The consideration stated in the memorial registered, was 600*l.* but the real consideration was 300*l.* paid at the time, and the giving up by *Norton* of an annuity of 50*l.* a-year, which had been before that time granted to him by *Birch* alone, for the sum of 390*l.* and upon which annuity several payments had been made, that annuity was never registered. This annuity came to *Wasburn* by assignment from *Norton*.

Upon a rule to shew cause why the bond and warrant of attorney given to secure this annuity, should not be delivered up to be cancelled, and the execution thereon set aside, the Counsel against the rule relied upon the case of *Symmons v. Mortimer*, post 108; and *ex parte Fallon* and wife, post 113. The former shews that though part of the consideration be the giving up of a former annuity, yet, if upon the whole the money stated as the consideration for the second annuity was actually advanced, either at first or at last, it may be stated as money in the memorial of the second annuity, without particularizing the whole transaction; because,
in

Of describing and setting forth the

in substance the annuity is granted for so much money as is actually paid by the grantee, and received by the grantor upon the whole transaction. And what further strengthens the observation in this case, is, that the first annuity not having been registered, was absolutely void, and consequently the grantor had received the 300*l.* for the use of the grantee. In the other case, *ex parte Fallon*, it was held that a sum of money paid by the grantee, at the request of the grantor, to another person, to redeem a former annuity, might be considered as so much money paid as part of the consideration of a second annuity.

Lord *Kenyon*, Ch. J.—The objection is not that the consideration for the second annuity is not a good one, but that it is not truly stated in the memorial. This annuity cannot be supported upon the authority of either of the cases cited. In the former, money was paid at different times, not for the purchase of different annuities, but it was intended from the beginning of that transaction that there should be only one annuity; it was a floating security, and when the

the last sum was paid by the grantee, it was considered as completing the purchase of that one annuity. The whole was a money consideration, and properly stated as such in the memorial. In the other case cited, the consideration was truly set forth in the memorial, as consisting of a sum of money, and of the giving up a former annuity. Whereas in this case, the whole consideration is stated as so much money paid at the time by the grantee to the grantor. Rule absolute.

Where an annuity has been purchased, and the securities are renewed from time to time, to obviate the necessity of their being registered according to the act, but before any memorial is enrolled, the consideration is increased by an additional sum being advanced for the sake of increasing the annuity, for the whole of which one security, properly registered, is given, and the old deeds are cancelled, it is sufficient if that memorial sets forth the aggregate of the two sums, as the true consideration, without noticing the distinct payments, because the original contract is considered as kept open by the renewing the securities until the whole sum is paid

paid. In such case the cancelling of the old deeds are not looked as forming any part of the consideration; neither is it material if twenty days have elapsed upon some of the former securities, before they were renewed.

Symmons v.
Mortimer, 5
Term Rep.
149.

This appears from the case of *Symmons* against *Mortimer*, where a rule *nisi* was obtained for setting aside the judgment which had been entered up in that cause, and for delivering up the bond given by the defendant for securing an annuity of 200*l.* to be cancelled. The transaction was this:—On the 8th *July*, 1783, the defendant borrowed of the plaintiff 1200*l.* for which he gave his bond to secure an annuity of 200*l.* for the life of the defendant, and a warrant of attorney to confess judgment. The defendant not being willing to have his name appear publicly in this transaction, it was agreed between him and the plaintiff that the bond should be renewed every twenty days, to prevent the necessity of registering a memorial pursuant to the Annuity Act. It was accordingly renewed on the 28th of *July*, in consideration of delivering up the first bond and warrant of attorney to be cancelled. On the 19th *August* following there was a further loan of 600*l.* from

from the plaintiff to the defendant, for which the annuity was to be increased to 300*l.* *per annum*; and the securities were again renewed, upon the consideration therein stated of 1800*l.* on the 26th September, and 15th October, and again on the 12th November, 4th December, 7th January, 1784, 28th January, and finally on the 17th of February, when they were enrolled for the first time. Upon all those occasions the consideration stated in the securities was the receipt of 1800*l.*, but the money was actually paid in the manner before mentioned, and all that passed at the subsequent times was the giving up the old, upon receiving the new securities. In the memorial registered of the bond and warrant of attorney, dated 17th February, 1784, for securing the annuity of 300*l.* the consideration therein stated for granting the same is the sum of 1800*l.* It further appeared that the agent who had negotiated the annuity between these parties was lately dead, and the affidavit disclosing these facts was made by *Mortimer* alone; the plaintiff being unapprized of what had passed between them respecting the delay of registering the memorial.

The

Of describing and setting forth the

The counsel in support of the rule being called upon by the Court to state their objections to the annuity, contended, that upon the face of the transaction it appeared that the consideration had not been set forth in the memorial. The Court have required the strictest exactness in this respect. Now here the true consideration for granting the securities registered, was not, as is therein stated, the payment of 1800*l.* at that time, but the payment of 1200*l.* in *July*, 1783, and a further sum of 600*l.* on the 19th *August*, for which securities had respectively been given at the time; and the real consideration of the registered securities was the giving up of those former securities to be cancelled. Besides which, the consideration, such as it was, was void; for, inasmuch as most of those former securities had run upwards of twenty days without having been enrolled, they had become absolutely void, by force of the statute, and could not therefore be a sufficient consideration for granting fresh securities.

Lord *Kerzon* Ch. J.—The length of time which has elapsed since the granting of this annuity, and the defendant's having lain by

Consideration in the Memorial.

111

Ch. I. s. 5.

by till the death of the agent by whom the business was negotiated, and till all evidence of the transaction, except what he himself has disclosed, was lost, might perhaps have been a sufficient answer to this application, without entering further into the merits of it; but taking it for granted, that the facts are, as they have been ascertained by the defendant, there seems no ground for setting aside the annuity. The objection is, that the consideration has not been truly stated in the memorial, because the 1800*l.* there set forth to have been paid as the consideration of the annuity, was paid in two different sums at different periods, for which securities were taken at the time, the cancelling of which was the real consideration for giving the enregistered securities. But in truth the money was paid for the grant of a valid annuity; and though the intermediate transactions kept the matter open from time to time, yet the same original contract subsisted; It remained *in fieri*, and was not consummated until the giving of the last securities which were properly registered. And when some of these securities fell to the ground, the whole consideration remained as

a debt due to the plaintiff. *Per Curiam.*
Rule discharged.

1 (a) Ante 1c6.

And that decision was approved of in the case of *Walsburn* against *Birch* (a), where Lord *Kenyon* Ch. J. said, that it was intended from the beginning that there should be only one annuity; that it was a floating security, and when the last sum was paid by the grantee it was considered as completing the purchase of that one annuity; that the whole was a money consideration, and properly stated as such in the memorial.

But if the money advanced is the consideration for two annuities payable to different persons, though the annuities issue from the same fund, and are paid by the same person, yet the memorial must specify the consideration and each annuity separately: for where there was an assignment of stock in trust to pay two annuities, each of the same amount, to two grantees, for which separate considerations, but each of the same amount, had been paid, and the memorial stated the transaction to be the grant of one annuity only, and described the consideration

tion jointly, the annuities were both held void, because the considerations were not truly described there according to the act.

Ch. I. f. 5.

That was so determined in the case of *Hood and others* against *Burlton and others*, where the annual interest accruing from certain funds was assigned to *John Hood*, who was to retain 100*l.* in trust to pay 50*l.* to *Edmund Hood*, and 50*l.* to *Lucy Gildet* annually during the joint lives of Mrs. *Burlton* and *Richard Gildet*, and *Lucy* his wife; and the memorial registered of the transaction, was a memorial of *one annuity* of 100*l.* granted by Mrs. *Burlton* to *John Hood*, in trust to pay 50*l.* part thereof to *Lucy Gildet*, and in trust to pay 50*l.* other part thereof to *Edmund Hood*; and the consideration for each was stated as being paid in one sum of 800*l.*

Hood et al. v.
Burlton et al.
2 Vez. Jun. 22.
4 Bro. Ch. Ca.
121, S. C.

The Counsel who took the objection, argued, that the consideration was not properly stated, because no joint consideration was paid. That in the deed, the consideration was expressly stated to be 400*l.* for the annual payment of 50*l.* to one person, and another 400*l.* for the annual payment of 50*l.*

I
to

Of describing and setting forth the

Ch. I. c. 5.

to another, that the memorial spoke of one annuity, the deed of two separate annual payments, and was in the nature of two distinct grants.

The Lords Commissioners *Eyre* and *Alburs*, held that it was not a good memorial within the act, and that consequently the annuities were void.

But if the consideration is paid in *Bank notes*, and is stated in the memorial as having been paid in *money*, that has been held to be a sufficient description of it within the meaning of the act; *bank notes* passing in the world as cash, and being generally considered so.

Wright v Reed,
3 Term Rep.
534.

That was the case of *Wright* against *Reed*, where a rule had been obtained to shew cause why the annuity deeds in that case should not be delivered up to be cancelled, on the ground that the true consideration was not set forth in the memorial; part of the consideration being in money, and the rest in *bank notes* of the Bank of *England*, whereas the whole consideration was described as *money* in the memorial.

The

Consideration in the exenorial.

115

Ch. I. c. 5.

The Counsel, who shewed cause, said that bank notes had always been considered as money; that they were so in the case of tenders.

Lord Keryon Ch. J.—Bank notes are considered as money to many purposes; it was so held by Lord Mansfield and the Court in *Millar v. Race*, (a) 1 Burr. 452.

(a) The principal point decided in that case was, that a Bank note, though stolen, becomes the property of him who gives a valuable consideration for it, if such person had no notice or knowledge of the robbery: And Lord Mansfield said, “*Bank notes* are *not* goods, nor securities, nor documents for debts, nor are so esteemed; but are treated as *money*, as *cash*, in the ordinary course and transaction of business, by the general consent of mankind; which gives them the credit and currency of *money* to ALL intents and purposes. They are as much *money* as guineas themselves are, or any other current coin, that is used in common payments, as money or cash. They pass by a *will*, bequeathing money or cash, and are never considered as the securities for money, but as money itself; on payment of them, the receipts are always given as for money, *not* as for securities or notes. So on Bankruptcies, they cannot be followed as identical and distinguishable from money, but are always considered as money or cash.” And in another part of the same judgment, his Lordship said,—“A bank note is constantly and universally, both at home and abroad, treated as *money*, as *cash*, and paid and received

Aspbury J.—The Annuity Act was passed for the purpose of guarding against fictitious considerations; but it cannot be contended that the payment in this case is within the mischief which that statute intended to remedy. Bank notes are money to all intents, and in this instance were taken as such.

Buller J.—This Court has never yet determined that a tender of bank notes is *at all events* a good tender; but if they have been offered, and no objection has been made *on that account*, this Court has considered it to be a good tender; and very properly so, for bank notes pass in the world as cash. In a case on the other side of the Hall (*a*) the Lord Chan-

ed as *cash*, and it is necessary, for the purposes of commerce, that their *currency* should be *established* and secured; and his Lordship declared that Mr. *J. Wilmot*, and the whole Court of *King's Bench* were all of the same opinion.

(*a*) See the case of *Austin v. the Executors of Sir William Dodswell*, Hil. 1729, 1 Eq. Cas. Abr. 319. which is the only case I can find, where an objection of this kind has been made in that Court, and there Lord Chancellor *King* said,—“That a tender in a bank note, was not, strictly speaking, a legal tender; but as it was ~~proved~~ that the plaintiff offered to turn it into money, that made it a good tender.”

cellor

Consideration in the memorial.

117

cellor once suggested a doubt whether these kind of notes were money; but here we have always been inclined to consider them as such, though the question has never yet been directly determined. *Per Curiam.* Rule discharged.

Ch. I. I. 5.

So in the case of *Cousins against Thomson*,

Cousins v. Thomson, 6 Term Rep. 335.

which was a rule calling on the plaintiff to shew cause why the securities given to him by the defendant, for an annuity of 200*l.* and why the judgment entered up on the warrant of attorney should not be set aside, one of the objections taken to the memorial was, that it did not shew how the consideration was paid, no notice therein being taken of the bank notes; it appeared by the affidavits in support of the rule that the consideration was paid by the plaintiff to the defendant in cash and bank notes. The above case of *Wright v. Reed* was cited in answer, where this precise objection had been in terms over-ruled, and the Court were of opinion that the objection was completely answered by that case, which they said was clearly distinguishable from the case of *Rumell v. Murray* (a) cited by the Counsel on

(a) Ante 64.

the other side, because the notes spoken of in the latter case were not bank notes, *which are considered as cash*, but the one a banker's check, and the other a promissory note, the particulars of which it was necessary to state in the memorial, to guard against the imposition of giving notes payable at a distant day, instead of money paid at the instant. The rule was discharged.

Where there are several deeds securing the same annuity, it is not necessary to state the consideration in each of them, as they are considered as constituting one assurance only, and the requisites of the act are complied with, if the consideration appears in any part of that assurance. As for instance, if the assurance consists of a bond, and warrant of attorney, to confess a judgment thereon, the warrant of attorney need not express the consideration, if the bond does; and in that case, though it be stated in each deed, it need be set forth but once in the memorial.

Hodges v. Money and Bailey,
4 Term Rep.
500.

Those points were decided in the case of *Hodges* against *Money* and *Bailey*, where the defendant *Money*, who had joined with *Bailey* in

Consideration in the memorial.

119

Ch. I. c. 5.

in granting and securing an annuity to the plaintiff, obtained a rule for the plaintiff to shew cause why the judgment entered upon the bond and warrant of attorney given to secure the annuity should not be set aside, and why those and all other securities should not be given up to be cancelled, and all further proceedings staid.

The facts appeared to be as follows :—
The memorial of the annuity^t set forth a bond in the penal sum of 600*l.* to secure an annuity of 50*l.* a year; a warrant of attorney to confess judgment thereon; and also an indenture between the parties, which is referred to on the bond, “whereby in consideration of the sum of 300*l.* &c. to *Bailey* in hand, paid by *Hodges*, *H. Bailey* assigned to *Hodges* his half-pay as a security, &c.” On the back of which said indenture is a receipt, under the hand of the said *H. Bailey*, for the sum of 300*l.* being the consideration money paid to him by *Hodges* for the purchase of the said annuity. Neither the bond or warrant of attorney, *as set forth in the memorial*, stated the consideration of granting the annuity, nor did the warrant of attorney

itself,

itself, which was produced in Court, contain the consideration, but was in the usual form.

The Counsel for the rule objected to the memorial, because it did not state the consideration of the bond, or of the warrant of attorney, but only of the indenture, and also that the consideration was not set forth in the warrant of attorney, so that it did not appear in every instrument itself, which, by the express requisition of the third clause in the act, it ought to have done (*a*); in answer to which objections,

(*a*) Ante 9.

It was argued, that the first clause of the act only requires that every memorial should contain the consideration of granting the annuity, not that every deed, &c. set forth in the memorial, should contain it. That would have been useless tautology, and unnecessary for the purpose of the act, which was merely to ascertain what the consideration for granting the annuity was, that the Court might see that the grantor had not been imposed upon; and that the end is as well answered by one averment of the consideration

deration as by many. And that it had been so determined by the Court of *Exchequer*, in the case of *Oliver v. Style*. One of the objections there was, that the consideration of the warrant of attorney was not stated in the memorial; to which the Court answered, that a warrant of attorney to confess judgment does not contain upon the face of it any apparent consideration, but it was referred to by the indenture; and they were of opinion, that they ought to couple the transaction, and take the whole memorial together, and if the consideration appeared that was sufficient. They added further, that a Court of Justice ought not to strain a remedial law for the purpose of injustice. That as to the other objection, that the warrant of attorney ought to have stated the consideration on the face of it, that never could have been the intention of the act; for then it would be equally necessary to state the consideration in the judgment, which is part of the assurance of the annuity: but it would be impossible. The true meaning of the Legislature was, that the assurance, whether it consisted of one or more deeds or instruments, should contain the consideration; not that it should be stated

Ch. I. f. 5.

Oliver v. Style,
in 8 *Scacc.* cited
4 *Term Rep.*
502.

stated as many times as there were deeds: several deeds for the same purpose in law making but one assurance.

Lord Kenyon Ch. J.—said, that as the act of parliament only required that the memorial should contain *the consideration of granting the annuity*, it would be absurd to repeat the same thing several times in the same memorial, though several deeds were given to secure the same annuity, each of them expressing the consideration. That such a requisition would be deservedly subject to the objection of tautology; a complaint to which legal proceedings were already too much open. And that there was no foundation for the other objection, that the consideration ought to have appeared in the warrant of attorney, for that the bond, the warrant of attorney, and the judgment, taken together, only constituted one assurance; and that the act of parliament was satisfied by inserting the consideration in any part of this one assurance, namely, the bond. That if an assurance of an annuity consisted of a lease and release, or of a fine and other deeds, it could not be necessary to insert the consideration

tion of the annuity in the lease for a year, or in the fine; but it would be sufficient if it appeared in the assurance, whether constituted of one or of several deeds. *Per Curiam.* Rule discharged.

But where there are several deeds securing the same annuity, although it be not necessary to state the consideration in every deed, or more than once in the memorial, yet there must be such a reference from the memorial to each deed, which does not contain the consideration, as makes it evidently appear that they are all connected, and relate to the same transaction; otherwise the deed which is not referred to will be void.

And if the memorial, taken by itself, does not contain the consideration of the annuity secured by the deed which omits it, and which appears unconnected with the other deed, although such deed may refer to memorials of former annuities which relate to the same transaction in different stages of it, wherein the consideration of the latter annuity is fully disclosed, yet that will not be sufficient, because it must be inferred from

from the memorial itself of every annuity, that all the securities relate to the same transaction, otherwise those which omit to state the consideration will be void.

*Saunders v.
Hardinge, 5
Term Rep. 9.*

Thus in the case of *Saunders* against *Hardinge*, Clerk, where it appeared that in October, 1782, the defendant, in consideration of 144*l.* granted an annuity of 24*l.* during his life to one *Baker*, and by way of securing it gave a bond of 300*l.* and a warrant of attorney to confess judgment, and assigned his glebe lands, tithes, &c. of the vicarage of *Hale Magna* for 99 years. In June, 1783, *Baker* assigned the annuity to *Collis*; who in April, 1786, assigned it to *Saunders* the plaintiff. On this last assignment, there was a memorial of a deed-poll, dated 7th April 1786, executed by the defendant (reciting that by indenture dated 26th June 1783, *T. Baker*, for the considerations therein mentioned, assigned the glebe lands, tithes, &c. within mentioned to *J. Collis*, for the remainder of the within mentioned term: that by an indenture of assignment, bearing even date with the deed-poll between *J. Collis* and the defendant, the same glebe lands, &c.

were

Consideration in the memorial.

125

were for the considerations therein mentioned assigned to the plaintiff for the residue of the term; that the plaintiff had contracted with the defendant for the purchase of a further annuity of 7*l.* during the defendant's life (over and above the within mentioned annuity of 24*l.*) for 42*l.* paid by the plaintiff to the defendant); by which deed-poll, in consideration of 42*l.* paid by the plaintiff to the defendant, the latter assigned to the former the said glebe lands, &c. for the residue of the within mentioned term:—The memorial also stated a bond dated the 8th *April* 1786, whereby the defendant became bound to the plaintiff in 400*l.* conditioned for the payment of *one clear annuity* of 31*l.* by the defendant to the plaintiff during the life of the former; and also a warrant of attorney of the same date, to confess judgment on the said bond, &c. In 1786 judgment was entered upon this last bond; upon which a *fieri facias* issued, and upon the return that he had no lay fee, &c. but was a beneficed Clerk, being Rector of *Gestingborpe* in *Essex*, a *fieri facias de bonis ecclesiasticis* issued in *June* 1791. Afterwards in *Michaelmas* Term 1791, one *Ward* recovered a judgment against

Ch. L. C. S. }

against the defendant in the Court of Common Pleas on a bond for 439*l.* and another writ issued, at his suit, of *feri facias de bonis ecclesiasticis*, “without prejudice nevertheless to the former sequestration.” *Ward* supposing there was a defect in the memorial of the annuity by the defendant to the plaintiff, obtained a rule in this cause, calling on the plaintiff to shew cause why the judgment, and the writ *feri facias de bonis ecclesiasticis* had thereon, should not be set aside, with a view of giving effect to his own subsequent judgment and execution. The objection to the memorial was, that the consideration for the annuity of 31*l.* secured by the bond was not stated.

The affidavits in answer to this application contained the two former memorials; the first in *October* 1782, was of a bond dated the 25th *October* 1782, from the defendant to *Baker* in 300*l.* conditioned for the payment of an annuity of 24*l.* from the former to the latter, during *Hardinge's* life; of a warrant of attorney to confess judgment on that bond; of an indenture dated the 24th of *October* 1782, by which the defendant, in con-

Consideration in the memorial.

127

Ch. I. f. 5.

consideration of 14*l.* paid to him by *Baker*, granted and demised to *Baker* the glebe lands, tithes, &c. of the vicarage of *Hale Magna*, in *Lincolnshire*, for 99 years, if the defendant should so long live and continue vicar, &c.; and of an indenture of re-demise dated the 25th of *October* 1782, by which *Baker* granted and demised to the defendant the said glebe lands, &c. for 98 years, if, &c. subject to the conditions, agreements, and purposes therein mentioned.”

The other memorial was “of an indenture of assignment dated 26th *June* 1783, by which *Baker* in consideration of 140*l.* assigned the glebe lands, &c. to *Collis* for the residue of the term; and by which he also assigned to *Collis* a bond, dated 25th *October* 1782, by which *Hardinge*, in consideration of 144*l.* became bound to *Baker* in 300*l.* conditioned for paying an annuity of 24*l.* during *Hardinge’s* life, in the manner therein mentioned; and also assigned the said annuity, and a judgment on the said bond, &c.”

The Counsel who shewed cause against the rule said, the consideration of the annuity from

Of describing and setting forth the

Ch. I. c. 5.

from the defendant to the plaintiff manifestly appears on the last memorial. It is an annuity of 3*l.* compounded of two sums, 2*l.* and 7*l. per annum.* / The consideration for the latter is stated in terms in the deed-poll to have been 42*l.* and that for the former, which is merely an assignment of another annuity originally granted by the defendant to *Baker* (and of which there is a regular memorial) may be seen by the deed registered in the first memorial, to which this last refers. If so, the consideration for the bond, which was given to secure the same annuity, as is evident from comparing the different instruments and sums together, need not be stated a second time in the memorial, which appeared from the case of *Hodges v. Money* (a). But if this memorial, taken by itself, be not sufficiently descriptive, yet when read with the two former ones, to which it refers, and which may be taken into consideration with it, as relating to the same transaction in its different stages, the whole consideration is disclosed.

On the other side it was insisted, that no consideration whatever is stated in the last memorial for the annuity of 3*l.* secured by

(a) Ante 118.

by the bond. The bond does not refer to the deed-poll (as was the case in *Hodges v. Money*) by which the two several annuities of 24*l.* and 7*l.* were secured; and there is nothing from whence it can be inferred that it is the same transaction, but the circumstance that both those annuities, when consolidated, amount to the same sum as the last annuity. But, on the contrary, any such inference is negatived by adverting to the different deeds; the annuity secured by the bond being "one clear annuity of 31*l.*" and the bond not being of the same date with the deed-poll by which the two other annuities are secured. This memorial must be taken by itself; but if the two others be referred to, nothing will there appear to connect the annuity of 31*l.* with the two former ones. And if it could be intended, that the annuity of 31*l.* were merely a consolidation of the two others, then it is open to another objection; that it is secured by two different bonds, upon both of which judgment has been entered up, and the execution issued on the last, and on the former one also for any thing that appears to the contrary.

K

Lord

Of describing and setting forth the

Lord Kenyon Ch. J.—I am extremely sorry to be obliged to set aside this judgment, because the transaction appears to be a fair one; and if I were at liberty to conjecture upon the subject, I might think perhaps that the annuity of 3*l.* was intended to be substituted for the two several ones of 24*l.* and 7*l.* But we are to form a judgment on the public document, directed by the Legislature; and as the annuity secured by the bond may, from the manner in which it is there registered, be different from the two several annuities mentioned in the deed-poll, this last judgment on the bond cannot be supported: but this will leave the other securities still in force (*a*). Had there been any words of reference in the memorial of the bond, as “the 3*l.* which is the same annuity secured by the deed-poll, &c.” the bond might have been supported; but there is nothing in the memorial to connect the one with the other.

(*a*) Vide ante Duke of Bolton v. *Williams*, where it was held, that a defective memorial affects the whole transaction. See also what his Lordship said in *Hart v. Lovelace*, 6 Term Rep. 471, ante 56.

Consideration in the memorial.

131

Grose J.—The statute requires that the consideration for every annuity shall be set forth in the memorial, otherwise that the deed shall be null and void to all intents and purposes. Here no consideration is set forth for the annuity secured by the bond; and therefore the bond is void. Rule absolute.

Ch. I. f. 5.

It is not necessary that the consideration of an annuity should be averred in the memorial as a substantive fact, but may be set forth therein by way of recital, as the object of the annuity act in requiring it to be stated in the memorial, was, merely that the public should have complete information of the real transaction between the parties; so that as no particular form is prescribed, any form which complies with the requisites of the act is sufficient.

That point was decided in the case of *Sowerby* against *Harris*, which was a rule to

*Sowerby v.
Harris*, 4 Term
Rep. 494.

shew cause why an annuity should not be set aside for a defect in the memorial in not stating the consideration of the annuity as required by the annuity act. The memorial as to this part of it, was as follows; after

K 2

stating

Ch. I. s. 5.

stating the date of the deed and the names of the parties, "whereby *Harris*, in consideration of 2100*l.* paid, and *which was in fact paid*, to him by *Sowerby*, granted to "the latter an annuity of 300*l.* &c." This motion was made, and the opinion of the Court given, before it was discovered that the memorial contained these words, "*and which was in fact paid*;" so that the case adjudged was on a supposition that those words were omitted. In fact, the sum of 2100*l.* mentioned as the consideration was paid by a banker's check, which was afterwards paid by the banker to *Harris*'s attorney, who deducted thereout 600*l.* for a demand which he had on *Harris*.

The Counsel in support of the rule gave up the point of the money being deducted, as the whole sum had been paid to *Harris*'s agent; but relied on the case of *Robinson v. Howell (b)*, and *Willey v. Wheeler (c)*, where it was held, that the consideration of the annuity ought to be averred in the memorial as a substantive fact; and he said that that was not required without good reason; for a contrary rule would open a door for fraud, and

(b) E. 31, Geo. 3.

B. R.

(c) Tr. 31, G. 3.

B. R.

and would be the means of introducing false recitals; on the other hand it was insisted, that as the act had directed no mode in which the consideration must be stated in the memorial, if the real consideration appeared in the memorial in any way, it was sufficient to satisfy the act.

Lord *Kerzon* Ch. J.—The object of the act of parliament, in requiring the consideration of the annuity to be stated in the memorial, was, that the public should have complete information of the real transaction between the parties. And that intelligence will be equally conveyed to the world, whether it be averred as a positive fact, that the consideration was paid, or only stated by way of recital. In both cases the parties may attempt to commit the fraud of introducing a false fact into the memorial, but that is always open to examination.

The Court thought it proper to discharge this rule with costs, the granting of the annuity appearing to be a fair transaction.

Ch. I. s. 5.

Hodges v. Money and Bailey,
4 Term Rep.
500.

The same point was determined in the case of *Hodges* against *Money* and *Bailey*, where the defendant *Money*, who had joined with *Bailey* in granting and securing an annuity to the plaintiff, obtained a rule for the plaintiff to shew cause, why the judgment entered up on the bond and warrant of attorney given to secure the annuity, should not be set aside, and why all other securities should not be given up to be cancelled, and all further proceedings staid.

It appeared that the memorial set forth a bond in the penal sum of 600*l.* to secure an annuity of 50*l.* a year; a warrant of attorney to confess judgment thereon; and also an indenture between the parties, which is referred to in the bond, “whereby in consideration of the sum of 300*l.* &c. to *Bailey* “in hand paid by *Hodges*, *H. Bailey* assigned “to *Hodges* his half-pay as a security, &c. “on the back of which said indenture is a receipt under the hand of the said *H. Bailey* for “the sum of 300*l.* being the consideration money “paid to him by *Hodges* for the purchase of the “said annuity.”

The

Ch. I. l. f. 5.

The Counsel for the rule argued, that there was no express substantive averment in the memorial, that any consideration was paid for the granting of this annuity. That what was stated in the memorial as being on the back of the indenture was mere *recital*, and no direct averment of the fact of the 300*l.* being paid. *Non constat* but that such a receipt may be written on the back of the indenture, and yet the money may not have been paid. It should have been averred in the memorial that the consideration *was* paid. In the case of *Robinson and Howell (a)*, where it was only stated by way of recital, "that in consideration of so much money paid to the grantor the annuity was granted," the Court held it insufficient.

(a) E. 31, G. 3.
B. R. ante 132.

It was insisted in answer, that the words following the receipt of the 300*l.* "being the consideration money paid by the said *W. Hedges* for the purchase of the said annuity," were a sufficient averment that the money had been actually paid: that it was the form in which averments in pleadings were often made. And as to the suggestion that it might be the mere recital of the words of

K 4 the

Ch. I. c. 5.

the receipt on the back of the indenture, that was not so : the receipt concluded thus ; “ being the consideration money *within mentioned* to be paid by him to me.”

But the *Court* said the objection had been disposed of in the case of *Sowerby* and *Harvis (a)*, and were of opinion, that the memorial contained a sufficient averment that the consideration was paid ; though they agreed, that if it were merely stated by way of recital that would be sufficient. *Per Curiam.* Rule absolute.

(a) Ante 131.

Cousins v. Thompson,
6 Term Rep.
335.

So also in the case of *Cousins* against *Thompson*, which was a rule calling on the plaintiff to shew cause why the securities given to him by the defendant for an annuity of 200*l.* and why the judgment entered up on the warrant of attorney, should not be set aside. The memorial registered was “ of a bond dated the 14th of *November*, 1792, whereby the defendant became bound to the plaintiff in 2400*l.* and reciting that the plaintiff had contracted with the defendant for the purchase of an annuity of 200*l.* for the life of the defendant for the price of 1200*l.* the

the receipt and payment of which said sum is thereby acknowledged by the defendant, &c." conditioned to be void on the payment of the annuity. The objection was, that it was not set forth in the memorial, that any consideration was paid, except by way of recital, in answer to which the foregoing cases of *Sowerby* against *Harris*, and *Hodges* against *Money* were cited; a distinction however was attempted to be taken between this case and those, because in the memorials of both of them it was averred that the consideration was paid; but

The Court were of opinion, that there was no foundation for the objection: and that though in those two cases cited in support of the objection, the consideration was alleged in the memorial to have been paid, the Court expressly gave it as their opinion, that it was sufficient, if the consideration of the annuity appeared on the memorial, whether it was stated as a fact or only recited; that independently of the decisions upon the subject, the reason of the act of parliament led to the same conclusion, for that the object of the act was merely to give full notice of

Ch. I. s. 6.

of the whole transaction to the public, which might be conveyed as well in one form as in another. The rule was discharged.

SECT. VI.

Of stating the Trusts and Interests of the Parties.

17 G. 3, c. 16, s. 1, ante 7.

AND *for whom any of them are Trustees, &c.*] The memorial of every annuity must contain the interests of all the parties, and specify particularly all the trusts declared in each deed securing it, otherwise the transaction will be void. Thus, where there had been an assignment of stock to a trustee, in trust to pay an annuity out of it during the joint lives of the grantee and his wife, and in case of the death of either of them in the lifetime of the grantor, in trust for the survivor, and the memorial registered did not state the contingent interest of

of the survivor, the annuity was held void, on account of that omission, upon the ground that the memorial did not contain all the interests of the parties, as required by the act.

Ch. I. f. 6.

That was the case of *Hood v. Burlton*, where it appeared that by the marriage settlement of *Ferdinand* and *Diana-Burlton*, stock in several funds was settled to the separate use of the wife for life. Mrs. *Burlton* having occasion for a sum of money, by an indenture, reciting her life interest in the stock, and that in consideration of the sum of 400*l.* to be advanced to her by *Richard Gildet*, she had agreed to sell to him the annual sum of 50*l.* part of the interest, dividends, and annual proceeds to be payable to her for her separate use during the term of her natural life; and whereas for securing to him the payment of the said annual sum, it was agreed, that she should appoint and assign all the interest, dividends, and produce of the several funds to become due to *John Hood*, his executors, administrators, and assigns, for the trusts therein-after declared; these funds were accordingly transferred to

John

Hood v. Burlton, 2 *Vez. Jun.* 29. 4 *Bro. Ch. Ca.* 121, S. C.

Of stating the Trusts and

Ch. I. l. 6.

John Hood, upon trust to pay 5*ol.* part of the said dividends to *Lucy*, wife of *Richard Gildet*, for her separate use, for life; and in case of her death in the life of her husband and *Diana Burlton*, then to her husband; and upon further trust, to make good the deficiency of some annuities which *Mrs. Burlton* was bound to pay to *Jane Clark*, and to pay the surplus to *Mrs. Burlton*. In this deed of assignment, *Ferdinand Burlton* covenanted to pay to the trustee any sum in which the said funds should be deficient to answer the annual payment to *Gildet*, and a proportionable share in case of the death of *Diana* between the days of payment: and for further securing the annual payment, he also gave a bond in the penal sum of 168*ol.* with a warrant of attorney.

A memorial of this transaction was registered, which took notice of the assignment of the stock to *John Hood* by *Diana* and *Ferdinand Burlton*, for the life of *Diana Burlton*, in trust to pay 5*ol.* to *Lucy*, wife of *Richard Gildet*, at and for the price of 400*ol.* It recited also *Ferdinand's* bond and warrant of attorney, but stated nothing of the interest of

Interests of the Parties.

141

of the survivor of Mr. and Mrs. *Gildet* in
that annual payment of 5*ol.*

Ch. I. s. 6.

Upon a bill filed by the plaintiffs, stating the annuities to be in arrear, and praying that the trusts of the deed of assignment might be established, and that the principal sum of money in the funds, and the interest and dividends thereof, might be transferred to, and applied according to the said deed, and the trusts thereof. The defendants by their answers admitted the facts as stated in the bill, and submitted, whether the trusts in the deed of assignment ought to be carried into execution, and the dividends applied according to it, as the memorial registered of the transaction took notice of the deed of assignment and *Ferdinand Burton's* bond and warrant of attorney, but stated nothing of the interest of the survivor of Mr. and Mrs. *Gildet* in that annuity, which it ought to have done, by the express words of the Annuity Act; and it was argued that the transaction was void, because the memorial did not correctly recite the trusts of that deed.

Lord

Lord Commissioner *Eyre*.—The objection to this memorial applies to a plain provision in the act, which is not satisfied. It directs the memorial to specify to whom the annuity is granted. Here it appears to be for *Lucy Gildet* for life, for her separate use, and if her husband survives her, then to him. The memorial has not stated it to be for him in that event. Can we then say, they have stated for whom it is granted? The direction of the act is plain, and capable of being pursued; and there is no good reason why the full extent of the benefit intended should not be stated. As all the persons interested are not stated by the memorial, I am of opinion that a sufficient memorial within the act has not been registered, and therefore that the annuity is void, and the bill must be dismissed.

Lord Commissioner *Asheurst*.—The question is, whether the act has been pursued. The memorial ought to set forth the dates, sums, witnesses, and all those things; and if it is with a trust, the parties beneficially interested. That is not done in this case, because

because no notice is taken of *Richard Gildet*. These acts must be literally and strictly pursued, therefore I think this is not a good memorial within the act. Bill dismissed.

Where the memorial of an annuity deed stated it to have been executed "*on the trust therein mentioned, and on further trust, that if any of the payments should be in arrear twenty days after it became due, the grantee might levy them out of the rents,*" and the grantor moved to have the annuity set aside, because the memorial did not disclose the trusts referred to, the Court of King's Bench held the memorial sufficient, because it appeared by an affidavit made by the grantee, that he purchased the annuity for himself only, so that there were no other trusts but that expressed in the memorial. And the construction which the Court at that time put upon this clause in the act was, that they extended only to persons for whom trusts were created; observing, that the Legislature did not mean to require the parties to mention all the trusts which were a lien on the estates, independently of the annuity, such as to pay taxes, chief rents, &c. but only those trusts which were

Ch. I. s. 6.

were created in consequence of the annuity being granted.

Toldervy v.
Allan, 5 Term
Rep. 480.

Those points appear in the case of *Toldervy v. Allan*, which was a rule calling on the plaintiff to shew cause why an annuity of 300*l.* granted to him by the defendant should not be set aside, and the deeds securing it delivered up to be cancelled. The facts, as they were disclosed by the affidavits, were these:—In *May*, 1792, the defendant in consideration of 2100*l.* granted an annuity of 300*l.* to the plaintiff, and for securing the same, executed a bond, a warrant of attorney to confess judgment thereon, and an indenture, by which the defendant granted and demised to the plaintiff certain manors, &c. in reversion, expectant and to take effect in possession on the decease of the defendant's father, for 100 years, upon trust for the better securing the payment of the annuity. In the memorial it was alleged that the parties executed the above deed, &c. by which the plaintiff demised to the defendant as above, for 100 years, *upon trust as therein mentioned*, and upon further trust, that in case the said annuity of 300*l.* or any part thereof, should

be

be unpaid by the space of twenty days after the respective days of payment, the plaintiff should and might, by and out of the rents and profits, raise and levy such sum, &c. as should be sufficient to satisfy the said arrears, &c." But it appeared by the plaintiff's affidavit that there was no other trust, and that he had purchased the whole annuity for himself, and not as trustee for any other person, though he had since assigned one moiety of it to Mr. *Sorton*.

It was objected, that the plaintiff had not complied with the Annuity Act, because the memorial did not disclose the trusts of the deed. But the Court of King's Bench thought there was no foundation for the objection; that it was answered by the fact, not now controverted, that there was no other trust, but that set forth in the memorial, and discharged the rule.

But had there been any other trusts, which were created in consequence of the annuity granted, the annuity would have been void, had they not been particularly specified in the memorial; for if the name
L. of

of any one *cestui que trust* is not disclosed, that is sufficient to avoid the security.

Accordingly an annuity deed was set aside for two such defects in the memorial; first, because the memorial only stated that part of the consideration was paid by the grantee to the trustee "in trust and for the purposes therein mentioned," without disclosing those trusts.—Secondly, because the memorial only set forth that the demise was made by the grantor to a trustee, "upon the trusts therein mentioned," without saying what those trusts were.

Dann dem.
Dolman v. Dol-
man, 5 Term
Rep. 641.

That was the case of *Dann*, on the demise of *Dolman v. Dolman*, where on the trial of the ejectment at the *Westminster* Sitings, a special case was reserved, in substance as follows:—*J. Ogilvie*, in June, 1780, by will devised the premises in question, with others, to *J. Hopkins* and *R. Dann*, upon trust that they should settle and convey the same, as to one moiety, to the use of his grandson, *J. O. Dolman*, the lessor of the plaintiff, but of no other person as his assignee or otherwise by his act or deed, for life,

life, without impeachment of waste, remainder to two trustees to be named in the settlement, to preserve contingent remainders, remainder to his first and other sons in tail, remainder to the daughters as tenants in common, remainder to the defendant *E.*

O. Dolman, for life. In the will is a proviso, that the aforesaid devise is upon this express condition, that neither the lessor of plaintiff or the defendant "should at any time sell, assign, mortgage, or otherwise dispose of, charge, or incur, their respective interests or estates for life or any part thereof, of and in the aforesaid estates or any part thereof," but that in such case the estate and interest of him or her so assigning, &c. should be utterly void to all intents and purposes, as if he or she were actually dead, and that from thenceforth such estate, &c. should be held and enjoyed by the person next in remainder. By indenture, dated 28th and 29th *November*, 1781, after the devisor's death, the moiety of the premises was settled to the uses of the will. By indenture, dated 14th *January*, 1788, between the lessor of the plaintiff, who was then seized under the will, &c. of the first part,

L 2

H. Toten

Of stating the Trusts and

Ch. I. f. 6.

H. Toten of the second, and *R. Griffith* of the third part, in consideration of 926*l.* 17*s.* 10*d.* paid to *Mark Taylor* by *Toten*, at the request, and for a debt of *Dolman*, and of the further sum of 113*l.* 2*s.* 2*d.* paid by *Toten*, at the like request, to *Griffith*, “in trust and for the purposes therein after expressed,” *Dolman* granted an annuity of 37*l.* to *Toten*, to be issuing out of the premises in question for 99 years, if *Dolman* should so long live; and he also thereby demised to *Griffith*, his executors, &c. all and singular the said premises, for 99 years, if *Dolman* should so long live, upon trust that *Griffith*, his executors, &c. should receive the rents, &c. and pay and apply them first in payment and satisfaction of the annuity to *Toten*, then to pay to *Dolman* himself for so many years of the term as he should live 40*l.* per annum, then to retain 1*s.* in the pound on the monies received, &c. and subject to the said annuity, and the other trusts and out-goings, upon further trust out of the residue of the money which should come to *Griffith* by virtue of the indenture, to pay off and discharge the sum of 150*l.* due from *Dolman* to *R. Howell*, 14*l.* 8*s.* due from *Dolman* to *Mrs. Matthews*, and

and the residue in discharge of such debts as might be due from *Dolman* to any other persons, and the overplus, if any, to *Dolman*. A memorial of this deed was duly registered, under the statute 7 Ann. c. 20, and another memorial of it under the 17 Geo. 3, c. 26, which stated truly the date of it, and the names and additions of the parties, and that it was witnessed that in consideration of 226*l.* 17*s.* 10*d.* paid by *Toten* at the request of *Dolman* to *Mark Taylor*, and of the further sum of 113*l.* 2*s.* 2*d.* by *Toten*, at the like request "to *Griffith* paid in trust as therein mentioned," and also in consideration of 5*s.* by *Griffith* paid to *Dolman*, *Dolman* granted to *Toten* an annuity of 37*l.* to be issuing out of the premises in question (describing them truly) to hold the said annuity for 99 years, if *Dolman* should so long live, upon the trusts therein-mentioned. R. *Griffith* entered into possession of the premises in question, and received the rents and profits thereof, subject to the performance of the trusts in the last-mentioned deed contained. An ejectment was brought on the demise of *Elizabeth Dolman*, to which *Edward Jordan* and R. *Griffith*, who claimed under the said

annuity deed, appeared and entered into the common rule, in which action the plaintiff recovered, and judgment was thereupon entered up, and possession of the premises was taken under such judgment; and now this action is brought to recover back the possession.

The question for the opinion of the Court is,—Whether the deed of the 14th of January, 1788, works a forfeiture of the estate of the said *J. O. Dolman* in the premises.

The Counsel for the plaintiff argued that it did not, because the deed was void in as much as it did not disclose all the trusts as required by the Annuity Act. On the other side it was insisted, that the deed was sufficient to satisfy the meaning of the act; and therefore it created an incumbrance on the estate.

Lord *Kenyon*, Ch. J.—Many cases have been brought before the Court, on the construction of this act of parliament, which have appeared to bear rather hard upon individuals: but yet, if they were set in opposition to the benefits which the public have derived

derived from the act, I believe that the balance would be greatly in favor of the latter. In framing a new law, it is impossible to foresee, and to guard against every possible inconvenience that may arise from it; and perhaps, if this law were now to be reviewed by the Legislature, some alterations might be made in it, better adapted to the ends proposed by it. This consideration may perhaps be a reason for an application to be made to the Legislature, but it cannot induce us, sitting in a Court of Law, to break through any of the provisions of the act. In order to see whether or not the deed in question be void, let us recur to the words of the act of parliament, and to the cases that have been decided upon it. The act says, that there shall be set forth in the memorial the date of the deed, the names of all the parties, "and for whom any of them are trustees," and of the witnesses, otherwise the deed "shall be null and void to all intents and purposes;" and not merely, as in the other act (*a*) alluded to, that "the deed shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration." Now if this me-

(a) 7 Ann. c.
20, s. 1.

Ch. I. s. 6.

morial does not set forth all the trusts of the deed, we cannot fritter away the words of the statute, and say that the deed is void only for some purpose, when the act has declared in express terms, that it is void to all intents and purposes. By referring to the deed it appears, that to a certain extent *Griffith* was a trustee for *Toten*, and a trustee for other purposes after *Toten's* annuity was satisfied. But though the former trust is set forth in the memorial, the subsequent trusts are not; and therefore the deed is void. Much ingenuity has been shewn by the defendant's Counsel in the argument: but the result of it is merely this, that perhaps it may be proper to apply to the Legislature to relax the severity of the present law, and to confine its operation to those parts of the deed only which affect the annuity: but as long as this act of parliament is to guide our conduct, we cannot get rid of an objection like the present, which is founded on the positive words of the statute. This case is widely different from the case of *Tolderrey v. Allan (a)*, because there all the trusts were set forth in the memorial.

(a) 5 Term
Rep. 480, ante
144.

Alsbury J. The annuity act requires that all the trusts shall be disclosed in the memorial. That was a condition imposed by the Legislature, without complying with which the deed is a nullity : that condition has not been complied with in the present instance, and therefore the deed is void to all intents and purposes.

Große J. It has been contended by the defendant's Counsel, that this memorial is sufficient under the annuity act. Now that act does not say that the memorial shall contain all the covenants, and every part of the deed by which an annuity is granted, but it specifies the particular parts of the deed that are to be set forth in the memorial ; namely, the date, the names of the parties, and for whom any of them are trustees." Then by looking at this deed it appears that *Griffith* was a trustee for *Howell* to the amount of 15*ol.* but the name of *Howell*, the *cestui que trust*, is not mentioned in the memorial. Then it was contended, that even if the memorial did not contain every thing required by the act, the deed was only void as far as respects the annuity : but to that argument the

the words of the act, that the deed shall be void to all intents and purposes, give a decisive answer.

Lawrence J. It has been argued, that the demise to *Griffith* is distinct from the grant of the annuity to *Toten*, and that consequently no part of that demise need be set forth in the memorial: but in that consists the fallacy of the defendant's argument. If indeed *Toten's* annuity had been granted by one deed, and the demise to *Griffith* subject to that annuity had been made by a separate deed, it would not have been necessary to register the latter, because that would not be a deed by which an annuity was granted: but the grant to *Griffith* in trust for *Toten* would operate as a grant of the annuity, if there had been no grant to *Toten* himself in the preceding part of the deed. *Griffith* therefore was a trustee for *Toten*; besides which, it appears in the deed that there were other persons for whom he was trustee; and if the name of any one *cestui que trust* be not disclosed in the memorial, that is sufficient to avoid the whole deed. It was admitted in the argument, that if the parties to an annuity

annuity agree that a part of the consideration shall be returned to the grantee, and paid to a trustee on that trust, that would avoid the whole: but in order to discover whether or not that be any part of the trust, all the trusts should be disclosed in the memorial. In order to discover and avoid fraudulent transactions, the more general the words of an act are, the greater probability there is that they will effect the purpose intended; for if the act enumerates only particular cases, it is open to evasion. The words of the annuity act are general; they require that the memorial shall contain the names of all the parties, and for whom they are trustees; and that not having been done in this case, the deed is wholly void. *Poslea* to the plaintiff.

SECT. VII.

Of a Mistake in the Memorial as registered.

17 Geo. 3. c. 26.
ante 7.

IF any mistake appears in the memorial registered, the Court, wherein any action is brought, or judgment entered by virtue of a warrant of attorney, will set aside the proceedings upon it, and order the annuity deeds to be delivered up to be cancelled. Thus where a warrant of attorney was given to confess a judgment on the annuity bond in the Court of Common Pleas, and the memorial described it to be a judgment in the Court of *King's Bench*, the mistake was held fatal, and the annuity deeds were vacated.

That was the case of *Jaques* against *Wilby*, where a rule was granted to shew cause why a judgment signed on an annuity bond by the defendant against the plaintiff, and a writ of execution issued thereon, and executed, &c. and all proceedings in that cause subsequent

Jaques v.
Wilby. 1 Term
Rep. 557.

subsequent to the judgment, should not be set aside, and why the bond, together with the warrant of attorney by which judgment had been signed on the bond in the Court of Common Pleas, should not be brought into Court, and delivered up to be cancelled, and the goods, &c. levied under the execution, restored to the plaintiff, and why the defendant should not pay all the costs of these proceedings on account of a defect in the memorial as registered; in as much as it appeared that the memorial stated a warrant of attorney to confess a judgment in his Majesty's Court of *King's Bench*, instead of his Majesty's Court of *Common Pleas*; upon cause being shewed, the Court of *Common Pleas* held the mistake fatal, and made the rule absolute.

But where the memorial of an annuity contains a description to which the annuity registered does not apply, if the memorial specifies all the particulars which the act requires respecting that annuity, the statement of unnecessary matter will not vitiate the transaction; but will be treated merely as surplusage.

Thus

Ch. I. c. 7.

Toldervy
against Allan,
5 Term Rep.
480.

Thus in the case of *Toldervy* against *Allan* the memorial of the annuity-deed stated it to have been executed *upon the trusts therein mentioned*, and on further trust, that if any of the payments should be in arrear twenty days after becoming due, the grantee might levy them out of the rents; and the grantor moved to set aside the annuity, because the memorial did not disclose the trusts referred to; but it appeared by an affidavit of the grantee, that he bought the annuity for himself, and that there was no other trust than that expressed, the *Court* of King's Bench held the memorial sufficient, and that there was no foundation for the objection, as it was answered by the fact not then controverted, that there was no other trust but that set forth in the memorial.

SECT. VIII.

What is considered as returning Part of the Consideration Money to the Person advancing the same, or retaining it on a Pretence within the Meaning of the Annuity Act.

I*F any part of the consideration shall be returned to the person advancing the same, &c.]*

17 G. 3. c. 26,
l. 4, ante 10.

A solicitor who advances his own money on the purchase of an annuity, is not entitled to any commission fee; so that if any part of the consideration money be returned to him by the grantor, as a charge for such commission, or if his charges are very exorbitant, and deducted out of the consideration money, the Court will set aside the annuity deeds, as being an evasion of this clause in the act.

That appears from the case of *Broomhead* against *Eyre*, which was a rule calling on the plaintiff to shew cause why the annuity deeds should not be delivered up to be cancelled, on account of the consideration not being

Broomhead v.
Eyre, E. 34,
G. 3. B. R.
MSS. 5 Term
Rep. 597, S. C.

What is considered as returning and

Ch. I. c. 8.

being duly paid according to the act, and being improperly stated in the memorial. It was sworn in the affidavits in support of the rule, that the defendant, with Mr. *Wade*, in April 1793, applied to *B. Howarth* to raise an annuity for him on their joint bond. *Howarth* procured it from *R. Woodgate* in consideration of 60*l.* to be secured by their joint bond in 1200*l.* to the plaintiff as trustee for *R. Woodgate*, and a warrant of attorney from each to confess judgment thereon. It further appeared that the consideration money was paid to the defendant, but that 19*l.* 11*s.* 4*d.* was deducted to pay *R. Woodgate's* bill, and that 30*l.* was paid for procuration money.

The memorial stated the joint bond and the consideration of 600*l.* as being all paid to the defendant, and also the two warrants of attorney, &c. but no notice whatever was taken of *R. Woodgate's* deduction for his bill, which was most exorbitantly charged under pretence of business done in preparing the securities, including 3*l.* commission money. This application was made by *Wade*, the surety in the bond with *Eyre*. On shewing

cause,

cause, the Counsel for the plaintiff argued, that if more than was due was charged, it was punishable by the seventh section of the act (*a*), but that it did not affect the annuity.

But

Ch. I. c. 8.

(*) Ante 13.

The Court of King's Bench said, "that the public were much indebted to the excellent person who drew up the act of parliament, which enabled them to put an end to transactions of this sort, and that the effect of the act would be at an end, if they suffered a case of this kind to escape them: that it had been long determined, that if the lender of the money charged for procuration, it was usury, because he was not entitled to it for putting out his own money. That the purchaser of the annuity ought to pay for the memorial, so that if that was charged, or any other improper or exorbitant charges were made by the purchaser under colour of his being scrivener, and he deducted those charges out of the consideration money which he advanced himself, it certainly was returning money within the fourth clause of the act. That here the 1*g*l. 1*1*s. 4*d*. was a very unreasonable and improper charge, and when

M

those

What is considered as returning and

Ch. I. c. 3.

those exorbitant items were deducted out of it, it reduced the consideration to 580*l.* 8*s.* 8*d.* but the memorial states it to be 600*l.* so that at all events it was improperly stated in the memorial; and the Court added, that they would make the *ru  * absolute, on the ground that it was within the fourth clause of the act, as a warning against such shameful transactions. Rule absolute.

17 G. 3. c. 26,
s. 4, ante 10.

If any part of the consideration is retained on pretence of answering the future payments of the annuity, or on any other pretence.] In the

Cox v. Wright,
E. 22, G. 3.
B. R. MSS.

case of Cox v. Wright, where a motion was made to set aside a nonsuit obtained, on the ground that an annuity was not properly registered, where it appeared that 500*l.* were to be given for an annuity of 100*l.* but 150*l.* were detained by the grantee for a year and a half accruing annuity, Willes J. said, "that in fact the grantee had detained a sum out of the consideration in his own hands, for which he was receiving interest, before any part of the annuity became due, contrary to the express words of the act; and Buller J. said, "he might as well have detained the whole.

In

In the case of *Watts v. Millard*, where an annuity of 30*l.* was granted in consideration of 180*l.* which the memorial stated to have been paid, whereas it appeared by the affidavits that only 130*l.* were paid to the defendant, and that the remaining 50*l.* were retained by *Watts* with *Millard's* consent, in part of payment of a demand which *Watts* had on one *Atkinson*, the attorney for both parties, which was accounted for by a receipt from *Watts* to *Millard* for that sum on account of *Atkinson*, and a promissory note from *Atkinson* to *Millard* for the same; which, it was contended, was the same as if so much money had been actually paid to *Millard*, because it was with his consent. But the *Court* held that the receipt of 50*l.* admitted by the grantor as money for another person made the annuity void, because it was retained on a pretence within the fourth section of the annuity act.

So also in the case of the Duke of Bolton against *Williams*, where *Mrs. Williams* was entitled to an annuity of 300*l.* and had assigned two small annuities out of it, which were secured by the assignment of her annuity

M 2

Ch. I. f. 8.

Watts v. Millard, E. 34, G. 3. B. R. MSS. 5. Term Rep. 593 S. C. but the same point does not appear.

Duke of Bolton v. Williams, 2 Vez. jun. 118, 4 Bro. Ch. Ca. 310. S. C.

nuity of 300*l.* And after the sale of those annuities, by deed between her and one *Creswell*, she agreed to sell an annuity of 250*l.* for her life to *Creswell*, and to enable her to do so, the assignees of the two small annuities agreed to assign them. For this purpose she assigned her annuity of 300*l.* to *Creswell*, in consideration of 2000*l.* upon trust to retain for himself 250*l.* a year during her life, and to pay the residue to her. At the time of execution, the two former annuitants received 1660*l.* 7*s.* part of the purchase money paid by *Creswell* in satisfaction of their annuities. Of the remainder of the purchase money 15*l.* was paid to *Balfour*, in consideration of his trouble in negotiating the agreement with the former annuitants, which payment they insisted on previous to their execution; and 31*l.* 10*s.* was paid to *Palmer*, *Creswell*'s attorney, for the expences of the transaction: after these deductions the remainder of the 2000*l.* was received by *Mrs. Williams*.

When these assignments came before the Court of Chancery, on the ground of their being void under the annuity act, Lord
Lough-

Loughborough Chancellor, upon affirming a former decree of Lord *Thurlow*'s, after pointing out several omissions in the memorial, his Lordship said; " Besides this, another clause in the statute is directly applicable. The original agreement we know nothing of but from the deed itself. How has that sum of 2000*l.* been paid to Mrs. *Williams*'s use? Just at the time, at the moment the money was paying, *Palmer* brings his bill. There is no evidence at all, that it was part of the agreement, that *Creswell*'s attorney should be paid by her. On inspecting the bill the charges seem proper; but they are against *Creswell*. In the course of this business the money he has received is to the use of *Creswell*. Though that sum cannot be said to be literally retained by *Creswell*, yet it was deducted out of the same, which upon the face of the transaction was all to be applied to her use. Suppose it fair, and that there was no sudden imposition, but that it was part of the agreement, it ought to be stated; for instead of receiving 2000*l.* there is a deduction of what in the ordinary course of the transaction would fall on *Creswell*:

M 3

there-

Ch. I. f. 9.

therefore the proposition in the decree is true, that the deed is void for want of enrolment of a proper memorial.

SECT. IX.

Of setting forth the Names of the Parties in the Deeds and Memorial.

17 G. 3. c. 26,
f. 1. ante 7.

AND every memorial shall contain, &c. and the names of all the parties, &c. And in another clause of the act it says, *In every deed, &c. whereby any annuity is granted, &c. the name or names of the person or persons by whom and on whose behalf the consideration shall be advanced, shall be fully and truly set forth, &c. in words at length, &c.*] In the case of

Ibid. f. 3. ante 9.

Watts v.
Millard,
E. 14, G. 3.
B. R. MSS.
5 Term Rep. 598
S. C. but the
same point does
not appear.

Watts v. Millard, amongst many other objections taken to the annuity transaction one was, that the christian names of all the parties were not mentioned at full length in the memorial;

memorial, but they did appear in some part of the securities. In answer to which the *Court* said, "that if the names of all the parties were set out at full length in any part of the securities, it was enough, but that the annuity must be set aside on account of the objection taken to the payment and improper description of the consideration.

In the case of the Duke of Bolton v. Williams, Lord Loughborough Chancellor, in giving judgment said, "that the memorial ought to contain the names of all the parties concerned in the payment of the consideration of an annuity, and that it was not matter of surplusage within the act, to set forth the names of two persons where two are concerned in the payment. That the object, of the Legislature was, that the whole transaction, the names of all the parties concerned, of whom enquiry might be made, or who might be called on as witnesses, should be inserted. And in another part of the same judgment his Lordship said, "the money was not in truth paid by *Creswell*, but by an agent, whose name ought to have been set forth. It should have stated, that it was paid by *Jenkins*, and on behalf of *Creswell*.

M 4

If

Duke of Bolton
v. Williams,
et al. MSS.
4 Bro. Ch. Ca.
297. S. C.
2 Vez. jun. 138,
S. C.

Ch. I. f. 9.

Of the Witnesses to each Deed.

If this can stand, his Lordship said, it would be necessary immediately to repeal the act; for the consequence would be, that the memorial, which, it is obvious, should serve as a check on these transactions, would be a cover to them, and would be deemed to give additional validity, instead of checking them, and bringing all the circumstances to light.

SECT. X.

Of the Witnesses to each Deed.

§7 Geo. 3. c. 26,
s. 1. ante 7. “**AND** the memorial shall contain, &c. and “the names of all the witnesses.”] A memorial under this clause of the Annuity Act ought to specify accurately all the names of the witnesses to the respective instruments by which the annuity is secured: stating them generally as witnesses is not sufficient.

That

That was decided in the case of *Hart v. Lovelace*, where a rule was obtained, calling on the plaintiff and another to shew cause why a judgment should not be set aside, and why an indenture, bond, and warrant of attorney, given to secure the annuity, should not be delivered up to the grantors to be cancelled, because, amongst other objections, it did not appear with sufficient distinctness who were the witnesses to the indenture, or to the bond and warrant of attorney, the memorial only stating, "that all the instruments were attested by, and executed in the presence of *W. D.* of, &c. and *W. M.* of, &c. or one of them."

Ch. I. s. 10.

Hart v. Lovelace, 6 Term Rep. 471.

It was argued, that the names of all the witnesses were set forth as required by the act. That it is not necessary under the act to append the names of the respective witnesses to each deed, for the transaction may equally be traced whether a person be a witness to one or the other of the deeds. But

Lord *Kerzon* Ch. J. said,—I cannot get over the objection, that the names of the witnesses

nesses to each of the deeds are not set forth with sufficient accuracy in the memorial, and this objection applies to the indenture as well as to the bond and warrant of attorney. The Legislature, in framing this act of parliament, intended that every circumstance relating to the annuity should be disclosed; and more information is likely to be collected on the subject, if all the witnesses to the different instruments be set forth in the memorial, than if only some of their names be there mentioned; for some important parts of the transaction may perhaps be known only to the witnesses to one of those instruments. In this memorial the names of the witnesses are not distinctly set forth; if we allow this mode of stating their names to be sufficient, it will be difficult to draw the line; and in the next case it may be alledged in the memorial, that the different instruments were executed in the presence of an hundred witnesses (naming them) "some or one of them." On the objection respecting the witnesses, I am bound to determine against the plaintiff, though on the merits it appears to be a hard case against him:

Whether the Securities are void, &c.

171

him; but in construing an act of parliament, which was passed for very wise purposes, we must establish a rule applicable to all cases.

Ch. I. c. II.

Grose J. and *Lawrence J.* expressed themselves of the same opinion; that the objection respecting the witnesses was fatal; and the rule was made absolute.

SECT. XI.

*Whether the Securities are void, or merely void-
able for any Defect in the Memorial; and
herein who may take Advantage of such
Defect.*

EVERY such deed, &c. shall be null and void to all intents and purposes.] It is fully settled, that unless a memorial of every annuity is registered conformably to the method prescribed by the act, the securities are not

17 G. 3, c. 18, s.
1, ante 7.

Whether the Securities are void,

Ch. I. s. 11.

not merely voidable, but absolutely void. And a person who is not a party concerned in the transaction may take advantage of any defect or irregularity in registering the memorial.

Thus, where a person, against whom a writ of *ieri facias* had been taken out, was in possession of goods under a deed, which was given in consideration of an antecedent debt, and a small annuity payable from thenceforth; the Court of King's Bench held the sheriff was warranted in returning *nulla bona*, because it appeared that the memorial of such annuity was not registered according to the directions of the act, and consequently the deed under which the goods and annuity had been obtained, was void.

Crosley v. Arkwright, 2 Term Rep. 603.

That was the case of *Crosley* against *Arkwright*, where the plaintiff brought an action against the defendant, as sheriff of *Derbyshire*, for a false return on a *ieri facias* issued on a judgment recovered against *William Clarke*, at the suit of the plaintiff, and indorsed, to levy 79*ol.* &c. At the trial before *Buller J.* at the Sittings at *Westminster*, after *Easter Term*,

Term, 1788, the plaintiff proved the judgment recovered against *Clarke* on the 27th *August* 1787, for 1400*l.* in debt on bond, for a bonâ fide consideration; and then a copy of the execution, and the sheriff's return of *nulla bona*. Then, in order to prove the property of the goods levied in *Clarke*, an indenture was produced, which was executed on the 4th of *June* 1787, between *Edward Allanson* of the first part, and *William Clarke* of the second part; whereby after reciting that 460*l.* was due from *Allanson* to *Clarke*, for which judgment had been confessed, and that *Clarke* had agreed to advance 20*l.* more, and to pay an annuity of 25*l.* per annum to *Allanson*, and provide him a decent apartment, *Allanson* assigned to him the possession of a farm, and all the crops, cattle, goods, and effects, &c. Of these the sheriff's officer had taken possession under the plaintiff's execution. But at the same time there was a distress for rent on the premises by the Duke of *Norfolk*, made on the 8th of *June*. After this execution at the suit of the plaintiff, *Clarke* himself took the same goods in execution, on a writ sued out by him upon a judgment against *Allanson*. The learned

learned Judge being of opinion, upon an objection taken, that the deed in question was void for want of an enrolment under the Annuity Act, and consequently that no property was proved in *Clarke*, nonsuited the plaintiff.

In *Trinity Term*, 1788, the Court of *B. R.* was moved to set this nonsuit aside, and grant a new trial, on two grounds: First, that the deed was only voidable, and not actually void, for want of a memorial having been enrolled; and secondly, that the sheriff, who was no party to it, could not take any advantage of that defect, whatever the parties themselves might.

The Counsel, who shewed cause in support of the rule, said, that there were many statutes worded as strongly as the Annuity Act, and that the Courts had construed them to mean only voidable at the election of the parties concerned (*a*). And he compared

(*a*) 1 El. c. 19. 10 Co. 59. a. Cro. Eliz. 207. 13 El. c. 10. 1 Bl. Com. 37. Co. Lit. 45. a. 3 Co. 60.

this

this to the cases of Fines and Recoveries, which, though declared to be void, are only voidable (*b*).

Ch. I. c. II. }

Buller J.—The question, whether, as a distress had been made on the premises, the sheriff was at liberty to take the goods in execution, was not considered at the trial. It is immaterial to consider in this stage of the business what a Court of Equity would have done, if an application had been made to them to enforce the registering of the deed: but the terms on which they would compel it are against the argument used by the plaintiff's Counsel; for they could not say that a deed, which was actually void in point of law, was good; but, as between the parties themselves, they would do what was right by a *sine wind*. If the Court of Equity interposed, it would be by saying, that the party who had granted the annuity shall not retain the consideration money against conscience; but if he did retain the money, they would compel him to make a new

(*b*) 2 Inst. 336. 3 Co. 59. b. 60. Bull. N. P. 224.

grant

grant, and to register it. It is also immaterial here to say, whether, in the instance put of a family settlement, containing the grant of a small annuity, a Court of Equity would consider it as two distinct deeds for that purpose. But the objection now is, that the deed itself is void, because the memorial was not registered according to the directions of the Annuity Act. The words of this statute are as strong as possible; it makes the deed void to all intents and purposes whatsoever: And in none of the numberless cases which have arisen upon this act, has it ever been doubted but that annuity deeds, not registered conformably to the statute, were void. The cases cited on behalf of the plaintiff do not apply: First, as to those relating to matters of record, they stand on a very different ground. And secondly, as to leases made by ecclesiastical persons: the object of those laws was to prevent ecclesiastical persons binding their successors without their consent; and therefore the Courts have said, that they may bind themselves, but not their successors. But the cases of annuity deeds proceed on different principles. We all know the mischiefs that ensued the granting of

of annuities previous to the statute 17 G. 3. c. 26. They are not granted for a number of years only, but for life, and generally by distressed men, who cannot offer any security beyond their own lives. And unless they can be avoided by the parties themselves, they cannot be avoided at all. And if we were to determine that an annuity, granted for the life of the grantor only, cannot be avoided during his life, such a construction would repeal the act of parliament. The two statutes alluded to, relating to gaming and usury, are very opposite; the provisions of those statutes are similar to those of the one in question; and it has been determined, that those securities are void, even in the hands of innocent purchasers. But there is another circumstance in this case which is decisive; it has been properly admitted in the argument, that at all events the parties themselves may avoid the deed: then let us consider, whether under these circumstances they have not elected to avoid it? In my opinion the act done by *Clarke* shews his election to avoid it. He had possession of these goods under the deed dated the 4th of June 1787; so long as that deed continued

N
in

in force, the property was his; but, not relying upon that, he afterwards sued out execution against these very goods, and by that he declared his election to avoid the deed. This cannot be likened to the case of a deed by which a small annuity is reserved to a person not privy to other parts of the deed; because here the annuity is the very consideration of granting of the goods; therefore the transaction is entire, and must stand for the whole, or be defeated for the whole. And here *Clarke* has said that he would not abide by it. With respect to the case of a contract upon paper not stamped, that is widely different from the present case. The Stamp Acts are merely revenue laws; there are clauses in some of the old ones to enable the party who has made a contract on unstamped paper, to get it stamped after it is made, on paying a certain penalty: now all these acts being made in *pari materiâ*, must be taken together; and though they say that such a paper shall be void, yet they make a provision to make it good; and therefore if it be stamped at the time it is produced, it is sufficient. The case also of a criminal prosecution for a forgery committed

mitted on unstamped paper stands on a different ground; the statutes only speak of deeds which are avoidable in law if not stamped; but in the case of forgery, the instrument is not produced as a good deed, but as a ~~false~~ one. Then it is not competent to the person making such false deed, to say on a criminal inquiry that is not good on another account; for if the instrument be false, and it be made with a view to deceive, that is sufficient to constitute a forgery.

Grose J.—I cannot form any opinion with respect to the real merits of this case. But the question before the Court now is between the plaintiff on the one hand, and the sheriff on the other; in which the Court is to determine, whether the goods taken under execution against *Clarke*, at the suit of the plaintiff, be the goods of *Clarke* or not? It has been said, that *Clarke* being in possession of them is *prima facie* evidence of the property being in him; so it is. But if that possession be gained by the deed, and that deed come before the Court, we must see whether it conveys the property or not; and

that brings us to the question, whether the deed is or is not void to all intents and purposes under the act of parliament. If it be, the plaintiff cannot recover. Then it is material to consider the situation of the parties: a writ was delivered to the sheriff, to take in execution the goods of *Clarke*; this deed was then put into his hands, by which he saw that an annuity was granted; and he also knew that it was void by the statute, because it was not registered. Then, after the act has declared that such a deed is void to all intents and purposes, it would have been imprudent in the sheriff to have continued in possession of the goods of which there was no valid conveyance. Whether *Allanston* or *Clarke* intended to dispute the validity of this deed, I cannot say: but I conceive that either the one or the other would dispute it, as it might be convenient for him to do so; for no counter-part of it was executed to *Allanston*, in order that he might have registered it. Then the observation with respect to what *Clarke* did afterwards, satisfies me that it was his intention to avoid the deed; that was not known to the world; but if any other person chose to claim under this deed,

deed, either of them would say that the deed was void. The argument by analogy from the statutes relating to usury and gaming, applies strongly to the present case. I lay aside all consideration of fraud; because, without laying any stress upon the question of fraud, I am of opinion that the deed is void in point of law; consequently, that the sheriff made a proper return, and that the nonsuit must stand. Rule discharged.

So the same points were determined in the case of *Saunders* against *Hardinge*, clerk, where there were several securities for the payment of an annuity, and an objection was taken to the memorial by a judgment creditor (who was not a party to the transaction) because the consideration for the annuity secured by one of the deeds, was not stated in the memorial, and there was no reference to such deed, so as to make it appear that the securities were all connected, and related to the same annuity. For which defect a rule was obtained to shew cause why a judgment entered, and writ of execution issued thereon, should not be set aside.

N 3

The

Whether the Securities are void,

The Counsel against the rule contended that though the words of the act are "*null and void*," they meant voidable only, and that the same construction had been put upon similar words in different statutes, 1 Eliz. c. 19, s. 5. 13 Eliz. c. 20. This, then, should have been avoided (if at all) at the instance of the defendant himself, the words of the statute being—"it shall be lawful for the party by whom the annuity is made payable, to apply to the Court, &c." (a). That this was introduced for the benefit of the party himself, and *quilibet potest renunciare juri pro se introducto*. On the other side it was said, if the memorial be defective, the act renders "the instrument null and void to all intents and purposes." But if it be only voidable, a creditor of the defendant, who stands in his situation, may elect for him to avoid it.

(a) Ante 10.

Lord Kenyon Ch. J. said,—there was no foundation for the arguments; for, that by the words of the statute, the bond was a nullity, because it did not state the consideration, and did not appear from the statement in the memorial to be connected with the

the other securities. That in several cases which had arisen upon this act of parliament, which in general was a very beneficial one, the Courts had found themselves fettered with positive terms of law; but that it was better in this, as well as in those instances, that a particular inconvenience should be felt, than all those mischievous effects should not be remedied, against which the annuity act was intended to guard.

Grays J.—said, that the statute required that the consideration for every annuity should be set forth in the memorial, otherwise that the deed should be null and void to all intents and purposes. That here no consideration was set forth for the annuity secured by the bond, and therefore the bond was void. Rule absolute.

So it appears from the case of *Bromhead v. Eyre*, that advantage may be taken of any defect in the memorial by a person who reaps no benefit from the annuity; for in that case *Mr. Wade*, who was only joint obligor in the bond with the grantee, made

N 4 the

Ch. I. f. 11.

Broomhead v. Eyre, E. 34, G. 3, B. R. MSS. 5 Term Rep. 597, S. C. but the same point does not appear.

Ch. I. s. II.

*Dann dem.
Dolman v.
Dolman,
5 Term Rep.
641.*

the application to the Court, and on his affidavit there appeared quite sufficient ground for the Court to set the annuity aside.

So also in the case of *Dann* on the demise of *Dolman* against *Dolman*, the Court of King's Bench held, that if the memorial of a deed to secure an annuity be defective, that the whole deed was void to all intents, even though there are other parts of it not connected with the annuity transaction. In that case the party being entitled to a life estate, subject to a condition not to charge or incumber it, granted an annuity, and demised the land as a security, but there was a defect in the memorial of the annuity in respect to the trust in the deed, all of which were not disclosed as the act requires; and it was held that the deed was wholly void, so that it did not work a forfeiture of the estate by an incumbrance. The Counsel for the defendant tried to distinguish that case from those before decided on the point, by observing that in those cases the consideration was so blended with the annuity deeds, that they could not be separated from it, whereas

whereas here every thing necessary to satisfy the act respecting the annuity itself was set forth in the memorial.

Ch. I. f. II.

Lord *Kenyon* Ch. J. Many cases have been brought before the Court on the construction of this act of parliament, which have appeared to bear rather hard upon particular individuals; but yet if they were set in opposition to the benefits which the public have derived from the act, I believe that the balance would be greatly in favour of the latter. In framing a new law, it is impossible to foresee, and to guard against, every possible inconvenience that may arise from it: and perhaps if this law were now to be reviewed by the Legislature, some alterations might be made in it, better adapted to the ends proposed by it. This consideration may perhaps be a reason for an application to be made to the Legislature, but it cannot induce us, sitting in a Court of law, to break through any provisions of the act. In order to see whether or not the deed in question be void, let us recur to the words of the act of parliament, and to the cases that have been decided upon it. The act says that

that there shall be set forth in memorial “the date of the deeds, the names of the parties, and for whom any of them are trustees, and of the witnesses, otherwise the deed shall be null and void to all intents and purposes;” and not merely, as in the other act alluded to, namely, 7 Ann. c. 20. that “the deed shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration.” Now if this memorial does not set forth all the trusts of the deed, we cannot fritter away the words of the statute, and say that the deed is only void for some purpose, when the act has declared in express terms that it is void to all intents and purposes. By referring to the deed it appears that all the trusts are not set forth, and therefore it is void. Much ingenuity has been shewn by the defendant’s Counsel in the argument, but the result of it is merely this, that perhaps it may be proper to apply to the Legislature to relax the severity of the present law, and to confine its operation to those parts of the deeds only which affect the annuity. But as long as this act of parliament is to guide our conduct, we cannot get rid of an objection

tion like the present, which is founded on the positive words of the statute.

Ch. I. c. II.

Alburt J. said the deed was void to all intents and purposes, and that the Court had before over-ruled the arguments which were urged to shew that only that part of the deed was void which relates to the annuity, where they decided that the deed was a nullity, because the parties had not complied with the condition imposed by the Legislature.

Grose J. It was contended, that even if the memorial did not contain every thing required by the act, the deed was only void as far as respects the annuity: but to that argument the words of the act, that it is void to all intents and purposes, give a decisive answer. This is one of the first attempts to explain away this part of the annuity act; but that is a very wife and politic law, and I am by no means inclined to begin to abridge its operation. In the case of *Crosley v. Arkwright* (a), we said that the deed was so far void, that no interest was conveyed by it; which was in reality determining that it was void to all intents.

(a) Ante 172.

intents. I am therefore of opinion, that the whole of the deed in question is void both within the words and the meaning of the act of parliament.

Lawrence J. In order to discover and avoid fraudulent transactions, the more general the words of the act are, the greater probability there is that they will effect the purpose intended; for if the act enumerate only particular cases, it is open to evasion. The words of the annuity act are general; they require that the memorial shall contain the names of the parties, and for whom they are trustees; and that not having been done in this case, the deed is wholly void. *Poffea* to the plaintiff.

SECT. XII.

*What is a good Consideration for an Annuity
within the Act; and at what Time the Con-
sideration Money must be paid.*

ONE of the principal mischiefs the <sup>17 Geo. 3. c. 26,
f. 3 and 4, ante
9, 10.</sup> Legislature meant to remedy by the annuity act, was, the great fraud which was practised in palming goods upon the purchaser of an annuity, which were not of half the estimated value; to guard against which the third clause of it provides, that the consideration shall be in money only, and the fourth clause expressly forbids its being in goods; the construction however of that clause seems to have been, that if any part of the consideration is for goods delivered *at the time* of the purchase, which by agreement are to stand for so much money as the value put upon them, in that case that the annuity shall be void to all intents and purposes. But that if a debt antecedently due for goods *previously* sold makes a part of the consideration, and the other part of it is paid in

Ch. I. f. 12.

in money at the time of granting the annuity, provided the contract for such goods was strictly legal, and not a fraudulent sale originally entered into with a view to any such transaction; the Court of King's Bench seemed to think that such contract was not within the mischiefs the act intended to guard against, and upon that ground allowed the grantee (*a*) to recover back such consideration, when the annuity was set aside on account of its being improperly registered, but they gave no decided opinion as to the validity of the consideration.

(*a*) *Shove v. Webb*, 1 Term Rep. 734.

The question has never come positively before the Court, Whether the assignment of one annuity, is a good consideration within the act for the grant of another annuity? But in a case where the first annuity was purchased at the special instance of the grantor of the second, the *Court of King's Bench* held, that as it appeared that the money was paid expressly for his use, it satisfied the words and meaning of the act; and that it was not necessary that the money should be actually told down at the time of the grant, provided the grantee paid a valuable

able consideration for the annuity and the grantor received it, though not immediately from him.

Ch. I. c. 12.

Thus where the consideration of an annuity was stated in the memorial to be 64*ol.* 105*l.* of which were paid in money at the time of granting it, and the remaining 535*l.* were paid by the grantee at the desire of the grantor to another person to redeem a former annuity granted by him, for which only 48*ol.* were paid, this was held a sufficient and legal consideration within the annuity act.

These questions arose in the case *ex parte Fallon and Wife*, upon a rule to shew cause why a warrant of attorney to confess judgment, and an indenture dated the 6th of July 1791, for securing an annuity of 8*ol.* to *B. Pigman* from *L. Fallon* and *Frances* his wife should not be set aside; the transaction appeared to be this, *Frances* the wife, being entitled to an annuity for life of 8*ool.* previous to her marriage with *L. Fallon*, assigned the same in trust as to 5*ool.* *per annum*, for her separate use, and as to the remaining

3*ool.*

*Ex parte Fallon
and Ux.
5 Term Rep.
283.*

300*l.* *per annum* to the use of her husband during their joint lives, remainder to herself. In June 1787, *L. Fallon* for the sum of 480*l.* granted an annuity of 80*l.* to *John Wintle* during the join lives of himself and his wife, and charged the same on the first mentioned annuity to him of 300*l.* *Fallon* being again distressed, he and his wife applied to *Wintle* to purchase another annuity of 80*l.* during the life of the wife only, on condition that *Wintle* would give up the former annuity of 80*l.* This was refused by *Wintle*, who was also unwilling, for some time, to permit *Fallon* to re-purchase the annuity of 80*l.* already granted. However *Wintle* at last consented to part with that annuity; but as he still refused to take the second, application was made to *Pigman* on behalf of *Fallon* and his wife to take up the first annuity of 80*l.* from *Wintle*, and to purchase in lieu thereof the annuity of 80*l.* in question. *Wintle* refused to take less than 535*l.* whereupon *Pigman* paid that sum to him for the assignment of the former annuity; and as it was agreed that *Pigman* should pay to *Fallon* and his wife 640*l.* for the annuity in question, dependent on Mrs. *Fallon*'s life only, the former

former annuity which had been ~~so~~ assigned from *Wintle* to *Pigman* was agreed to be assigned from the latter to *Fallon* as for 53*l.* the purchase money, and to be taken as part of the consideration of 64*ol.*; and the remaining 105*l.* were paid to *Fallon* and his wife in money. This annuity was granted on the 6th of *June*, and the memorial enrolled according to the act on the 26th of the same month; the memorial of it stated accurately all the above transactions; and stated the present annuity of 8*ol.* to be granted in consideration of the assignment made by *Pigman* of the former annuity, and also in consideration of 105*l.* paid by *Pigman* to *Fallon* and his wife. The rule for setting aside the warrant of attorney and deed was obtained on the ground that the whole consideration was not in money, as required by the annuity act.

It was argued by the Counsel who shewed cause, that as the transaction was *bonâ fide*, and the money actually paid, it could not be avoided by the annuity act, which was only intended to protect necessitous persons from fraudulent impositions. ~~On~~ the other side they

they contended that it was no answer to say that this transaction was a fair one; for the act directed that the consideration of an annuity should be in money only, in order to exclude all intricacy or question concerning the fairness or unfairness of the transaction; that it might appear manifestly at first sight whether the transaction were fair, and what the consideration was. Now it does not expressly appear upon the face of this transaction what the real consideration was; but it is necessary to develop the previous acts of these and other parties, from whence it can only be inferred that the transaction was fair, and that a *bonâ fide* consideration was paid by the grantee. But still it is necessary that the whole of the consideration should be paid in *money* to the grantor, which was not the case here; for in fact the grantor only received 58*5*l. as the consideration of an annuity, which was valued at 64*0*l. the remaining sum being in the pocket of *Wintle*. But the statute can only be satisfied by the whole consideration being paid in money immediately from the grantee to the grantor: and if that line be departed from in any instance, it will open a door to those frauds which

it

it was the purpose of the act to prevent.

Ch. I. f. 12.

Lord *Kenyon* Ch. J.—It is not necessary to determine now whether an assignment of one annuity is a sufficient consideration for the grant of another within the annuity act (a); for here the first annuity was purchased by *Pigman*, at the special instance of the grantor of the second, and as her agent, and therefore the money paid for it may be fairly said to have been paid expressly for her use. The great mischief intended to be provided against by the Legislature in this act was the fraud and circumvention of those who took advantage of the necessities of distressed persons, desirous of taking up money upon annuities, by putting off goods upon the latter at their own price, instead of money, which goods they were afterwards to be disposed of at a considerable loss. For this reason the Legislature required that the consideration should be in money, and not in

(a) Vide *Symmonds v. Mortimer*, 5 Term Rep. 139, ante 108. *Wasburn v. Birch*, ibid. 472, ante 104. *Duke of Bolton v. Williams*, 4 Bro. Ch. Ca. 297, ante 80.

What is a good Consideration

goods. But it is not necessary, nor was it ever intended, that the money should be actually told down at the time of the grant. If it be a *bonâ fide* transaction, and the money be really paid to the grantor or to his use, it satisfies the words and meaning of the act. Now that was the case here. The grantee paid a valuable consideration for this annuity, which the grantor received, though not immediately from him; yet it was paid on the grantor's account. I am not indeed prepared to say that any annuity, however obtained, or for whatever sum, is a sufficient consideration within this act for the grant of another annuity; but at any rate this was purchased in the way of agency, by the request, and for the use of the grantor.

Asheurst J. concurred.

Buller J.—The annuity act intended to prohibit the purchase of annuities for goods belonging to the grantee, by the sale of which at a price stipulated by himself the grantee gained an unreasonable and fraudulent profit out of the consideration which was pretended to be advanced. And therefore it is expressly required

required that the consideration shall be in money, and not in goods. But that cannot affect this transaction; for here the purchaser of the second annuity cannot be said to have ever been in possession of the first on his own account; for he redeemed it at the express requisition of the grantor and on her account; and must therefore be taken to have expended so much money for her use, which is the same as if he had paid it to her. And then this cannot be distinguished from the case of a debt for so much money actually borrowed of the grantee by the grantor.

Grose J.—The object of the act was to prevent the payment in goods instead of money; but I consider the 64*ol.* as really paid to the *Fallons*. Rule discharged.

So also in the case of *Walsburn* against *Birch*, where the consideration for an annuity was stated in the memorial to be 600*l.* of which only 300*l.* were paid at the time, and the remaining 300*l.* had been paid to the defendant for an annuity of 50*l.* a year which was then given up, the *Court* of King's Bench

O 3

made

Walsburn v.
Birch, 5 Term
Rep. 472.

Ch. I. f. 12.

made no objection to the payment of the consideration, but they set aside the annuity on account of the consideration not being truly described in the memorial according to the act. And upon the Counsel who shewed cause against the rule insisting that this case was like that *ex parte Fallon supra* 191; that the transaction was sufficiently particularized according to that decision. Lord Kenyon Ch. J. said, "in the case cited, the consideration was truly set forth in the memorial, as consisting of a sum of money and of giving up a former annuity." But his Lordship did not say whether the consideration itself was good or not within the act.

Kirkman v.
Price, 1 Hen.
Bl. 309.

The same point occurred in the case of *Kirkman* against *Price*, as to the necessity of the money being paid at the time of the granting the annuity, and there it seems admitted that it is not necessary that the grantor should receive the consideration immediately at that time from the grantee, provided the money is advanced to him before registration, or previously paid to his use. The facts in that case were as follows; an annuity was granted in consideration of 160*l.* to be paid

paid by the plaintiff to the defendant, secured by a bond, warrant of attorney, and deed of assignment of his half-pay as Lieutenant; and it appeared upon affidavit that 99*l.* 14*s.* 6*d.* of the money had been *previously* lent by the plaintiff, for which the defendant gave several promissory notes, and that the plaintiff at the time of the granting the annuity advanced only so much as remained to complete the 160*l.* allowing twelve guineas for the expences of the deeds, but gave up the notes. Upon a rule to shew cause why the securities should not be delivered up to be cancelled, because the consideration was not a good one, and not fully set forth as the statute required; the *Court of Common Pleas* seem not to have thought the objection as to the consideration material, though they gave no decided opinion on the validity of it, but made the rule absolute on the ground of its not being sufficiently described in the memorial.

So also in the case of *Jaques* against *Witby*, where the consideration was a judgment recovered in the Court of King's Bench for 340*l.* 10*s.* from the defendant for

Jaques v.
Witby, 1 Term
Rep. 557.

Of recovering back the Consideration

Ch. I. f. 13.

an annuity of 50*l.* a year, secured by a bond and warrant of attorney to confess judgment thereon, to be paid by the plaintiff during his life, where upon an application to the Court of Common Pleas a rule was granted to set aside the securities on account of the memorial being improperly registered, but no objection appears to have been taken to the consideration.

SECT. XIII.

Of recovering back the Consideration when the Deeds, &c. are set aside on account of a defective Memorial.

17 G. 3. c. 16, s. 1, ante 7.

WHERE the consideration for an annuity consisted partly of money paid at the time of granting it, and partly of a debt due for goods previously sold to the grantor, and the securities were set aside on account of the consideration not being sufficiently

When the Deeds, &c. are set aside.

201

Ch. I. f. 13.

sufficiently described in the memorial, the Court of King's Bench suffered the grantee to resort back to the original debt for the goods sold, and to maintain his action to recover the full amount of the consideration; because, they said, as the contract for the goods was fair, and not entered into with a view to any such transaction, it was not within the mischiefs intended to be remedied by the Annuity Act; and as to the money, that it was unconscientious in the grantor to retain it after the consideration for which it was given, had failed.

That was the case of *Shove* against *Webb*, which was an action of *assumpsit* for goods sold and delivered; money paid, laid out, and expended; money had and received; and for goods sold and delivered to one *A. Dobinson*, upon the defendant's credit, and at his request. Plea, the general issue. On the trial, at the Sittings after *Hilary* Term 1789, at *Guildhall*, before *Buller* J. a verdict was taken for the plaintiff, damages 16*l.* 17*s.* 3*d.* subject to the opinion of the Court as to the sum of 118*l.* 17*s.* 3*d.* part thereof.

Shove v. Webb,
1 Term Rep.
732.

The

Of recovering back the Consideration

The defendant, on the 26th of July 1783, executed a bond and warrant of attorney to confess judgment thereon in the Court of Common Pleas, for securing an annuity of 25*l.* during the life of the defendant. The defendant also executed an assignment of his half-pay as an ensign in the army, as a collateral security. The deeds for securing the annuity have been since set aside in the Common Pleas, because part of the consideration for which the annuity was granted was 40*l.* 19*s.* 9*d.* due from the defendant to the plaintiff, for goods *previously* sold by the plaintiff to him, which was not specified in the memorial as registered. The residue of the consideration, for which the annuity was granted, was 7*l.* 17*s.* 6*d.* paid by the plaintiff to the defendant in cash at the time of granting the annuity. The defendant is indebted to the plaintiff in 42*l.* for goods sold.

The question for the opinion of the Court was,—Whether the plaintiff was entitled to recover any and what sum beyond the sum of 42*l.*? After the case had been argued

gued, the Court took time to consider, and afterwards

Ch. I. f. 13.

Alburt J. delivered the opinion of the Court. The question in this case will depend on the construction of the statute 17 G. 3, c. 26, commonly called the Annuity Act. It appears from the above state of the case, that the contract between the parties was for the sale of an annuity of 2*5*l. *per ann.* by the plaintiff to the defendant, the consideration of which was a debt of 46*l.* 1*9*s. 6*d.* antecedently contracted by the defendant, and a sum of 71*l.* 17*s.* 6*d.* paid to him by the plaintiff, in money. Upon the registering of this contract under the Annuity Act, the consideration was stated to be the sum of 118*l.* 17*s.* 3*d.* paid in money, whereas part of it was for goods sold. The Court of Common Pleas very properly set aside and vacated the security, which they found themselves bound to do under the express words of the statute. And the question is,—Whether, as the security is set aside, the party can resort back to the original debt, the fairness of which is not impeached, and maintain his action for the recovery of it. On the

part

Of recovering back the Consideration

part of the defendant it was argued, that the Legislature meant to make it *illegal* to contract for the sale of an annuity for any other consideration than that of money, and if any part of the consideration is for goods delivered, it so far taints the transaction, that if the security is set aside, no right of action can ever arise as for goods sold. In order to decide this question, it will be necessary to consider the provisions and meaning of the act of parliament. It first provides, that a memorandum of all deeds for granting life annuities shall, within twenty days of the execution thereof, be enrolled in the Court of Chancery, which shall contain the date, names of the parties, &c. otherwise the security to be void. It then provides, that in every deed, instrument, or other assurance, by which any annuity shall be secured, "the consideration really and bonâ fide paid, *which shall be in money only*, shall be fully and truly set forth and described in words at length, otherwise, to be null and void to all intents and purposes." Then it provides, that "if any part of the consideration shall be returned to the person advancing it, or if the consideration be paid in notes which shall not be paid

paid when due, or if the consideration, or any part of it, be paid in goods, &c. in all and every of the aforesaid cases, it shall and may be lawful for the party to apply by motion, &c. and if it shall appear to the Court that such practices as aforesaid, or any of them, have been used, it shall and may be lawful for the Court to order the deed, bond, &c. to be cancelled, and the judgment, if any has been entered, to be vacated." These are the principal provisions in the act of parliament on which the question arises. Now had any part of the consideration been for goods delivered *at the time*, which by agreement were to stand for so much money as the value put upon them, then the question would fairly have arisen, Whether, as this was in the teeth of the act of parliament, and one of the mischiefs the act meant to remedy, as great frauds were practised in palming goods upon the purchaser of the annuity, which were not of half the estimated value; then, I say, the question would fairly have arisen, whether, if the securities were set aside, the law would have raised any implied promise to pay the value of the goods; and the maxim might have been

been urged *quod ex maleficio non oritur contractus*. But, as that is not the case here, we give no opinion upon it. The goods here were not originally delivered with a view to such contract, but were really and bonâ fide sold. The contract was strictly legal, and not within the mischiefs intended to be remedied by the act.

The security, then, is set aside, not on account of any fraud or defect in the contract itself, but upon a formal defect in making the memorial, or at least it was an innocent mistake of the law. And taking that to be the case, when the security was vacated, the original contract revived. If indeed the sale had been made a few days before colorably, and with a view of afterwards stating the antecedent debt as part of the consideration of an annuity intended to be granted, that would have totally altered the case; but as it is to be taken that they were bonâ fide sold, we think the plaintiff is entitled to recover for them.

* In regard to the money paid as part of the consideration, as the security is not set aside

aside for any fraud in the transaction, but merely for a mistake or omission in form, it becomes unconscientious in the party to retain it, and is therefore recoverable on the count for money had and received to the plaintiff's use. Therefore we are of opinion that the plaintiff is entitled to recover for his whole demand.—Judgment for the plaintiff 16*ol.* 17*s.* 3*d.*

Ch. I. f. 13.

So in another case, where the annuity became void by the neglect of the grantee in not registering a memorial within the time prescribed by the statute, the Court of King's Bench seemed to admit that the grantee might recover back the consideration from the grantor; but they would not suffer him to recover any part of it from a person who had joined him in signing a receipt for it, and had lent his name merely as a surety for the payment of the annuity, but who in fact had received no part of the consideration money.

That appears from the case of *Stratton* against *Rastall* and another, which was an action of *assumpsit* for money had and received

Stratton v. Rastall & al. 2 Term Rep. 366.

Of recovering back the Consideration

ed by the defendant (and one *William Avarne*, who was outlawed at the suit of the plaintiff) to the use of the plaintiff, and for money lent, and paid, to which the defendant pleaded the general issue. At the trial at *Guildhall*, at the Sittings after *Michaelmas* Term 1787, before *Buller J.* a verdict for 425*l.* was found for the plaintiff, subject to the opinion of the Court, on a case stated.

In *October* 1780, one *Joseph Sharp* applied to the plaintiff, and informed him that the defendant and *Avarne* were desirous of granting an annuity of 100*l.* for their joint lives, and the life of the survivor. The plaintiff agreed to become the purchaser for 575*l.* and the following deeds and writings were executed by the defendant and *Avarne* to the plaintiff. A bond, dated 23d *October* 1780, in 1150*l.* given by the defendant and *Avarne*, for securing the payment of the annuity to the plaintiff. A warrant of attorney of the same date to enter up judgment on the bond; and also an indenture *tripartite*, of the same date, between the defendant and *Avarne* of the first part, the plaintiff of the second part, and *George Jobnstone* of the third

third part, whereby, after reciting the agreement for the purchase of the annuity, and also reciting that the plaintiff had advanced and paid 57*5*l. to the defendant and *Avarne* for the purchase of the said annuity, and that for the more effectual securing the payment thereof, the defendant had agreed to subject the rents and profits of certain messuages, lands, &c. therein mentioned with the payment of the said annuity, it is witnessed, that in consideration of 57*5*l. so paid by the plaintiff to the defendant and *Avarne*, for the purchase of the said annuity, the receipt of which the defendant and *Avarne* respectively acknowledged, the defendant did grant and demise unto *George Jobnstone*, his executors, &c. certain lands and hereditaments therein mentioned for the term of 99 years, if the defendant should so long live, upon trust, in case default should be made in payment of the annuity; that *Jobnstone* might receive the rents and profits of the premises, and apply the same for the benefit of the plaintiff in discharge of the annuity. The defendant and *Avarne* signed the following receipt on the back of the deed for the said 57*5*l.—“Received the day and year

P

first

Of recovering back the Consideration

Ch. I. l. 13.

first within-written, of and from the within-named *John Straton*, the sum of 57*5*l. being the consideration money within-mentioned to be by him paid to us, and for which said sum we have also signed a like receipt upon the back of another part of the within-deed; we say received the same, by us *William Rasfall, William Avarne*." Neither the bond nor the warrant of attorney, nor indenture was enrolled within the time prescribed by the statute respecting the grants of life-annuities, whereby the same became void. On the 12th *June* 1787, the defendant filed a bill in Chancery against the plaintiff, impeaching the grant of the annuity, for want of a consideration, and praying an injunction against further proceedings in the present action. On the 21st of *June* 1787, the plaintiff put in his answer to the bill; and, amongst other things, stated, that on the treaty for the annuity, *Skarp*, whom the plaintiff had for some time before known and been acquainted with, on behalf of the defendant and *Avarne* jointly, and not on the behalf of *Avarne* only, applied to the plaintiff to purchase the annuity, and asked him 60*0*l. for the purchase thereof, but he would not give

give for the same more than 575*l.* which sum he agreed to advance, and *Sharp* agreed to take for the annuity; and at the same time he purposed that the said several securities before-mentioned should be executed by the defendant and *Avarne*; and in another part of his answer he admitted that he understood that the whole of the purchase-money was intended to be applied to the use of *Avarne* only, and that the defendant was only a surety for *Avarne*, but did not know whether the whole was actually received by *Avarne* only. But he said he would not have purchased the annuity, or advanced the 575*l.* unless upon the security of the complainant, and of the assignment made by him. *John Willmer*, one of the subscribing witnesses to the said securities, and who was produced at the trial on the part of the plaintiff, proved that he did not see any money paid at the time of the signing and executing the same.

It was argued for the plaintiff, that the defendant's receipt was an acknowledgment by him of the purchase-money having come into his hands, and that nothing appeared to the Court to shew that he was not to be be-

Of recovering back the Consideration

Ch. I. s. 13.

negit by the sum, or at least that he was not to have a share of it, and that it was quite immaterial to the plaintiff, whatever private agreement there might have been, as between the defendant and *Avarne*, concerning the division of the money; and that it appears that the plaintiff looked upon the defendant as a principal, because it is stated that he would not have advanced the money but on the credit of the defendant's security on his estate; and that both applied for the money, and that it was paid to both, and the defendant dealt on the joint security of both.

For the defendant it was insisted, that the action could not be maintained without proof that some consideration came to the defendant, of which his signing the receipt was not conclusive evidence, and rebutted by another fact, by which it appears that the defendant did not actually receive any benefit from the money; that it was like the case of trustees, where it has been held that those only are accountable for it, who had in fact received the money, although all of them had signed the receipt for it; therefore that
- this

when the Deeds, &c. are set aside.

213

this action could not be maintained, because the defendant was looked upon as surety for the payment of an annuity, and not for the return of any part of the consideration-money.

Ch. I. f. 13.

Alburtz J.—I think the plaintiff may maintain this action. For, wherever a man has received money upon a consideration, which afterwards fails, that person from whom he received the money has a right to recover it back as money had and received to his use. Here the plaintiff has paid a sum of money on a consideration which has failed, and the only question is, from whom he is entitled to recover it. I am of opinion that he is entitled to recover it either from the defendant and *Avarne*, or from either of them. Indeed, it appears from the whole of this transaction, that the plaintiff had no confidence in *Avarne*, but relied wholly on the defendant. *Avarne* had no property; it was the defendant who gave the security. That being the case, and the consideration having failed, is the plaintiff deprived of his remedy against the defendant, because he understood that the money

P 3

was

was originally raised not for the use of the defendant, but for that of *Avarne* only? The plaintiff had nothing to do with any private agreement between the defendant and *Avarne*; he advanced the money entirely, or principally, on the credit of the defendant. If the plaintiff had been asked whether he would have trusted *Avarne* only, he would have said no; the receipt imports it. As between these parties, both the defendant and *Avarne* received the consideration money; and the plaintiff shall not now be permitted to aver against his receipt.

Buller J. said,—I am of opinion that the plaintiff cannot maintain this action against the defendant. It was clearly understood at the trial, that *Avarne* in fact received the whole of the consideration money; and on this case it must be taken that the defendant was only a surety. I will consider this as a question of strict law. On *Avarne's* proposition to raise a sum of money by way of annuity, offering the defendant as a surety, the plaintiff advanced the money upon the security of both for the payment of the annuity. Now, on strict principles of law, if that contract

contract becomes void by the act of the plaintiff, on what ground can he recover back that money? for the neglect of a plaintiff cannot raise a debt in a defendant. It formed no part of the contract; if he can recover at all it must be on equitable principles. But as against a surety, the contract cannot be carried beyond the strict letter of it. Then can the plaintiff recover against this defendant on equitable principles? Of late years this Court has very properly extended the action for money had and received; it is founded on principals of justice, and I do not wish to restrain it in any respect. But it must be remembered, that it was extended on the principle of its being considered like a bill in equity. And therefore, in order to recover money in this form of action, the party must shew that he has equity and conscience on his side, and that he could recover it in a Court of Equity. Then as to the equity in this case; it appears that the money was advanced for the use of *Avorne*, and that he only was benefited by it. But there is no equity in saying that a person, who has only lent his name by way of securing the payment of the annuity, shall

CH. I. T. 13.

be answerable for the consideration money of that annuity for which he has not pledged his security, and from which he has received no benefit whatever. Could the plaintiff recover this money against this defendant in a Court of Equity? The case (*a*) which has been cited by the defendant's Counsel is very strong to shew that he could not, and that equity distinguishes between the persons who join in a receipt, and him who actually receives the money; and that the receipt is not conclusive against him, as he was only a surety, and in fact received no part of the consideration money. In conscience he only who received the money ought to be oblig-

(*a*) The Attorney General v. Randal, 2 Eq. Caf. Abr. 742. In that case, though a receipt had been signed by three trustees, yet the Chancellor decreed, that the one only who had in fact received the money, should be accountable for it.

And in the case of Bristow and al. assignees of Clark and Gilson, v. Eastman, T. 34 G. 3, before Lord Kenyon, Ch. J. at Guildhall, his Lordship decided, that in order to make a receipt conclusive Evidence against all the parties, it must be given under a full knowledge of all circumstances depending between the parties, and by one having full authority to give it. 1 Espin. Ni. Pri. Ca. 173.

ed

ed to pay it back: and a Court of Equity would enquire in this case whether the party had received the money or not. Now if a Court of Equity would give this plaintiff no relief, we ought not to permit him to recover in a Court of Law, in an action founded upon equitable principles. So that whether this is considered as a question of strict law, or upon the equitable principles which have prevailed in actions for money had and received, I think the plaintiff is not entitled to recover.

Große J.—Having taken further time to consider of his opinion, afterwards delivered it as follows:—This is an action for money had and received. There has been no express promise made in this case, the action therefore, if it can be supported at all, must be founded on an implied one. The *prima facie* evidence of this, is the receipt which was signed by the defendant jointly with *Avarne*, whereby they both acknowledged to have received the money. But this must be taken with all its concomitant circumstances; and from them it appears that the defendant, in consideration that the plaintiff would

would advance 575*l.* for the benefit of *Avarne*, undertook with *Avarne* to become surety, and did become surety, for the payment of an annuity of 100*l.* and accordingly a bond was entered into by both to that effect. By the subsequent neglect of the plaintiff that bond is become of no use. But the plaintiff says that, under these circumstances, the law implies a promise by the defendant to repay the money advanced as money had and received to the plaintiff's use. But no case has been cited to shew that under such circumstances the law implies such a promise. And in reality the money is not received by the defendant to the use of the plaintiff, nor lent to the defendant, but advanced to *Avarne*, and the defendant for the benefit of *Avarne* in consideration of an annuity secured by bond to the plaintiff. Then it is neither money lent to be repaid, nor received for the use of the plaintiff. So that in strict law the evidence does not prove either count of the declaration. How stands the case then upon equitable principles? It appears plainly that in fact the defendant has had no benefit from this money; *Avarne* had the whole: then

Avarne

with
Avarne
 It is
 become
 for t
 the
 and
 plain
 equi
 ceiv
 who
 acti
 or e
 live
 and
 Cou
 liti
 cot
 fide
 the
 who
 fide
 rest
 but
 was
 nui

Avarne should be answerable for the whole. It is true that the defendant consented to become surety for *Avarne*, but he was surety for the payment of the annuity, and not for the repayment of the consideration money; and he entered into a security which the plaintiff has destroyed; but that raises no equity against the defendant who has received no benefit in favour of the plaintiff, who is alone in fault. And therefore the action cannot be supported either upon legal or equitable grounds. The *Postea* to be delivered to the defendant.

Ch. I. f. 13.

In the case of *Crespigny* against *Wittenoom* and another (which was an action in the Court of King's Bench, respecting the validity of an annuity which the defendants had covenanted to pay to the plaintiff in consideration of his giving up his business in their favour) Mr. J. *Grose* said, that in cases where money has been paid as the consideration the Courts order the money to be restored when they vacate the annuity deeds; but the business, the relinquishment of which was the consideration of granting this annuity, we cannot order to be restored.

Crespigny v.
Wittenoom,
et al. 4 Term
Rep. 793, post
chap. 5, f. 3.

So

Ch. I. C. 13.

So where an annuity contract was rescinded after the purchase money had been paid some time, the purchaser was suffered to recover back the whole of the purchase money, with interest from the time it was paid.

Beauchamp v. Borret, G. 3. Hll. 32. B. R. Peak's N. Pr. Ca. 109, cor. Lord Kenyon at Westminster.

That was the case of *Beauchamp v. Borret*, which was an action of *assumpsit* for money had and received. The plaintiff having purchased an annuity of the defendant, which was void on account of the deeds not being enrolled, it was agreed, after two yearly payments had been made, that the annuity should be rescinded; and that the defendant should pay to the plaintiff the money paid for the purchase of the annuity, with interest from the last yearly payment. The sum paid for the purchase was 600*l.* the annuity was 100*l.* per annum. The only question in the cause was, whether under this agreement (which was contained in a letter from the defendant) the plaintiff was intitled to recover the whole 600*l.* with interest from the time of the last payment, or whether the 200*l.* which had been paid should be deducted.

Lord

when the Deeds, &c. are set aside.

221

Lord *Kenyon* was of opinion, that both under the agreement and according to the justice of the case, the plaintiff was intitled to recover the whole 600*l.* and interest from the time the annuity ceased, and the jury gave damages accordingly.

Ch. I. f. 13.

And it seems that in an action brought to recover back the consideration money, the only question to be tried in such action is, whether the consideration for the annuity has been paid; so that it is not material to that issue, or necessary to prove the consideration paid according to the requisites of the annuity act, because it is immaterial to the point on the record how the memorial stated the consideration to have been paid, or how it was paid, if it really was paid, as payment by any means supports that issue, which has no relation whatever to the statement of it in the memorial, and no other point ought be gone into on such issue.

It was so decided in the case of *Franco v. Lindo*, which was an action of debt to recover the arrears of an annuity granted by the defendant. The defendant pleaded, 1st, *Non est factum*; 2dly, as to part bankruptcy;

3dly,

Franco v.
Lindo, Hill. 35,
G. 3. B. R.
Esp. Ni. Pr. Ca.
300, cor. Buller
J. at Guildhall.

3dly, that in the memorial of the said annuity, registered under the annuity act, as required by that act, the consideration therein stated to have been paid, had not been paid, so that the annuity was therefore void.

The two first issues were clearly proved for the defendant; the third issue was, whether the memorial had truly stated the consideration paid, it having stated 300*l.* as paid for it, whereas the defendant alledged that 142*l.* in money only was paid, the remainder having been made up by a sum of money which *Lindo* the defendant had lost at play. In proof of this issue the plaintiff proved the execution of the deeds, and that at the time there was paid to *Lindo* a number of bank notes, the remainder in money, and by a check on a banker. *Lindo* said it was right at the time, but the exact sum was not proved. It was objected that the plaintiff had failed in proof of the issue, which was merely whether the consideration had been paid or not, that it was therefore incumbent on him to prove such payment as the act of parliament required: But

Buller

Buller J. over-ruled the objection;—he said that the question on the record was not whether the memorial had so stated the consideration of the annuity, that the Court would set it aside, for having been untruly stated, but whether the consideration had been paid. That this was a question of dry law, as to what was payment, and whether that payment was made in one way, or the other, made nothing to the question; it was not necessary to prove payment by cash or bank notes; a draft was payment under this issue: so if there had been a setting off of debts, by one against another, it would have been good payment; and it was in proof that *Lindo* had accepted the bank notes, &c. in payment; he was therefore of opinion, that the evidence supported the issue.

But where parts of a rent-charge have been assigned to different persons for proper considerations, and a Court of Equity is applied to to know whether the assignments are legal, if such assignments are set aside on account of any defect in registering the memorials, that Court has no power to provide for the debt raised by the considerations, out of

Of recovering back the Consideration

Ch. 1. c. 13.

of any arrears of the rent-charge paid into their hands, but the original contracts must be established, and the claims of the annuitants effectuated in a Court of Law before they will be entitled to receive back their consideration money.

Thus where the grantee of a rent-charge had assigned several annuities out of it to different persons, and there was a dispute respecting the claims of the assignees, in consequence of which the arrears of the rent-charge were paid into the Court of Chancery, where the assignments were held void on account of their being improperly registered, that Court would not suffer the assignees to deduct their consideration money out of the arrears paid therein, as they belonged to the original grantees, but said that they must first apply to a Court of Law to establish their respective claims, there being only a general debt at law, and no lien.

Duke of Bolton
v. Williams,
2 Vez. jun. 138,
4 Bro. Ch. Ca.
5. C. 397.

That appears from the case of the Duke of Bolton against *Williams*, which was a bill of interpleader filed in *Easter Term* 1790, as to a rent-charge granted out of an estate demised

demised by the late Duke for 99 years to *William Law*, since deceased, in trust for *Mary Charlotte Williams*, who had assigned parts of it to *Ardejois* and *Dubourg*, and had afterwards joined them in assigning their annuities and a further part of such rent-charge to *Creswell*, since deceased; there was also an assignment of a further part of it to *Samson*, since deceased, but on account of some disputes between *Mary Charlotte Williams* and the executors of the assignees, the annual payments of the rent-charge had been for several years in arrear: the bill stating that the defendant *John Williams*, the husband of *Mary Charlotte Williams*, was abroad, prayed that the several claimants might interplead, thereby offering to pay the arrears into Court, and for an injunction to restrain the defendants from proceeding in ejectment, or otherwise at law against the petitioner or the tenants of the estate. It appeared from the evidence, that the memorials of the assignments contradicted the real transactions respecting the payment of the consideration money, and were in other respects defective, on which account Lord *Thurlow* in *May* 1792 decreed, that the deeds under which

the

Of recovering back the Consideration

the executors of *Sampson* and of *Creswell* claimed were void, and ordered the growing payments to be paid to *Mary Charlotte Williams*, and the injunction to be perpetual against the executors of *Creswell* and *Sampson*, and against *John Williams*, *Mary Charlotte Williams* his wife, and the executor of *William Law* the trustee, till further order.

At the re-hearing of this cause upon the petition of the parties, Lord *Loughborough* Chancellor affirmed Lord *Thurlow*'s decree, and in giving judgment said, "In consequence of both annuities being void it is contended, that this Court having possession of a fund arising out of the estate in equity belonging to Mrs. *Williams*, ought to provide for satisfaction of the debt, she will owe to these persons in respect of the money advanced to her. The annuities being void, the annuitants cannot recover. All the instruments are void. But they have paid her a sum of money; and it is said, actions have been brought where annuities were set aside, for the money really advanced; and that upon that supposition these parties will have a right to recover: but what they are to recover

recover will be matter of inquiry in that action. They will be able to effect it at law, or not. If they can, I have no right to make her, because the Duke of Bolton is anxious to know to whom he shall pay this annuity, and it turns out to be her's, pay a general creditor, because I find a sum here that is her property. She does not come for relief as a plaintiff. She is necessarily brought here to abide the event of the inquiry into the legal objections to the annuities of the other parties. If they are liable to legal objections, I can make no decree against her. I might as well make her pay a sum of money for goods sold and delivered, upon the supposition that they might recover. I am not sure what they will recover. I am clear, the whole set up as a demand by *Creswell* will not be recovered. *Palmer's* bill must undoubtedly be deducted. Perhaps in some other respects she would not be chargeable for more than the real amount of the money received. But upon the supposition that they are not able to make good at law their demands against her, what equity arises? If they fail at law, it must be on the ground that the contracts are void at law,

law, that the advancement of this money to a married woman cannot be the subject of a suit at law. I do not say, it will be so: but if they fail, that must be the ground. Would a Court of Equity make good against a married woman a contract bad at law, because incapable of producing an action against her? I should consider much, before I would advance the remedy farther than the law gives it against a married woman. But have I a right at all to enter into the consideration of that question? Unless the parties here can make out a lien, I have only to make the plaintiff safe by telling him, he cannot pay to the annuitants. The necessary consequence is, the payment must be made to Mrs. *Williams*. I have no right to stop her from receiving it, leaving it open to what they can do against her. I finish this cause by saying, they have no right, nor any lien upon it, but are only general creditors of her. But it was pressed for *Creswell*, that having taken those annuities from *Ardesoif* and *Dubourg*, and there being no objection to them, he has a right to stand in their place, and their lien, if any, is available to him. Whatever may be the condition

of

of those annuities, as to which no inquiry has been directed, it is clear, no person can claim in right of another grantee of an annuity without having that derived to him under a proper memorial registered of that assignment being made; for it must appear by the registry, who is the real owner, and beneficially entitled to the annuity. The defect therefore of the memorial destroys his claim in their right, for he has not shewn it transmitted to him by any security the law allows. I cannot make a decree, that they having received the money, should make good conveyances to him, certainly not upon this bill." Decree affirmed.

SECT. XIV.

Of applying by Motion to the Court in which any Action is brought, or any Judgment entered up; within what Time this Application should be made, and by whom; and herein what is an Action within the Annuity Act.

17 G. 3. c. 26. s.
4, ante 10.

THE person by whom the annuity is made payable may apply to the Court, &c. by motion, &c.] This clause in the act relates to the particular provisions of that section only in which it is introduced, so that the benefit of applying by motion to the Court in which any action is brought, or any judgment entered up, when there is any defect in the memorial as registered, is not confined to the person by whom the annuity is made payable.

Saunders v.
Hardinge,
5 Term Rep. 9.

That appears from the case of *Saunders* against *Hardinge*, clerk, where a judgment-creditor of the grantor applied to the Court wherein a judgment was entered on the annuity

nuity bond with a view of letting in a subsequent judgment of his own recovered against the defendant, and obtained a rule to shew cause why the judgment entered on the bond and execution sued thereout, should not be set aside on account of a defect in the memorial in not setting forth the consideration of a bond securing the annuity.

The Counsel against the rule insisted, that if the defect in the memorial was such as rendered the securities void, it ought to be done at the instance of the defendant himself, the application to the Court being allowed by the express order of the act "to the party *only* by whom the annuity is made payable," and that as it was introduced for his benefit, a stranger could not take advantage of it, if the grantor himself did not.

Grose J.—The fourth section referred to, which says "that the grantor may apply to the Court, &c." refers to a different class of cases; those, "where part of the consideration is returned, or any notes are not paid, when due, or the consideration paid in goods,

Q 4

or

Ch. I. c. 14.

or any part of it is retained upon any pretence," &c. Rule absolute.

Broomhead v. Eyre, E. 34, G. 3. B. R. MSS. 5 Term Rep. 597. S. C. but same point does not appear

So in the case of *Broomhead* against *Eyre*, where the defendant had obtained an annuity on the joint security of himself and one *Wade*, but all the consideration money was paid to the defendant, the Court of King's Bench set aside the annuity, as being void by the annuity act on several grounds, upon the application of *Wade*, the surety in the bond with the defendant.

But a person who has purchased the interest in any security, which the grantor of the annuity had assigned to assure the payment of it, is not intitled under this clause of the act to apply to the Court to have such security to be delivered up, upon the ground that the annuity which the instrument was to secure, had not been properly registered; because the assignee of such security is not sufficiently interested to make the application under this clause in the act, which specifies what interest intitles a person to seek relief; moreover the Court has no power

power over a deed, which by the Annuity Act was never of any effect after the time for enrolment had elapsed.

Ch. I. c. 14.

Thus in the case of *Garrod* against *Saunders*, where it appears, that on the 24th of September 1793, *Saunders*, in consideration of 100*l.* granted an annuity of 16*l.* to *Garrod*, and by way of securing the same, assigned a lease of two houses, and gave her a bond and warrant of attorney to confess judgment on the bond. These three instruments were registered on the 15th of October following (which is not within the time allowed by the act). Afterwards *Saunders*, for a valuable consideration, sold his interest in the above lease to *R. Douglass*; who, on *Saunders's* absconding insolvent, obtained a rule, calling on *Garrod* to shew cause why these three instruments should not be delivered up to be cancelled, because they were not enrolled "within twenty days of the execution," according to the Annuity Act.

The Counsel who opposed this rule, admitted that the deeds were void under the first

Ch. I. f. 14.

first section of the Annuity Act, because they had not been enrolled until the twenty-first day, but insisted that the Court had no authority to set them aside under the fourth section, which only gives that authority in certain cases, and where the application is made by the grantor of the annuity; for that though the Court had in some instances set aside securities on the prayer of those claiming under the grantor, it was only in cases where a judgment had been entered up, or a warrant of attorney given for that purpose, and the judgment set aside to let in another creditor, who was interested in the judgment; as in the case of *Saunders v. Hardinge* (a), which is not the case here, for *Doußerry* is only intereſtered in the assignment of the lease.

(a) Vide ante
230.

The Counsel in support of the rule, ſaid that both the firſt and the fourth clauſes of the act ſhould be taken together; that it was the intention of the Legiſlature to give the Court power to cancel any deeds for ſecuring an annuity, that are void under the firſt ſection; and that the Court had in other caſes conſidered that the aſſignee of the grantor is in

in which any action is brought, &c.

235

in the same situation as the grantor himself,
for the purposes of the Annuity Act.—

Ch. I. f. 14.

But

The *Court* said,—“that the words of the fourth section were expressly confined to cases where the application was made by the grantor himself; and that it appeared immaterial whether the deeds in question were or were not delivered up, as they were clearly nullities by reason of the first clause; that they had no power to set aside the deeds, because there never was an annuity in existence, and although *Doußerry* was an assignee of the leases, he was not sufficiently interested, as appeared by the fourth section of the Annuity Act, which specifies what interest entitles a person to seek relief in that Court.—
Rule discharged.

In the case of *Grant v. Foley*, it was objected that the application came too late to set aside an execution issued on a judgment entered on an annuity bond, and that as the party knew long before that the assignment of the annuity was not enrolled, he had been guilty of *laches*, in not applying sooner, and that

Grant v. Foley,
Tr. 23 G. 3, C.
B. MSS.

that the Court were not bound to give summary relief; in answer to which Lord *Loughborough*, Ch. J. said,—That it was not positively charged that the party applying did know that the memorials were irregular; and that if he had known it, he doubted whether the Court could refuse to give summary relief on his application; that the statute declared the proceeding to be null and void, so that the Court was doing no favour; consequently that the execution must be set aside.

However, where the memorial of an annuity transaction did not disclose the circumstances as required by the act, and it appeared that the party had acquiesced in the annuity, till all the persons who knew the original transaction were dead, the Court of King's Bench seemed to think that circumstance to be a sufficient answer to the application.

Symmonds v. Mortimer, 5 Term Rep. 139.

Thus in the case of *Symmonds v. Mortimer*, where it appeared that the agent who had negotiated the annuity between the parties, was lately dead, and that the affidavit disclosing

disclosing the facts, on which the application to set the annuity aside was grounded, was made by the grantor alone, and that the grantee was unapprized of what had passed between them respecting the delay of registering the memorial, which was the principal ground on which the application was founded. Upon reading the affidavit,

Lord *Kenyon* Ch. J. said,—“The length of time which has elapsed since the granting of this annuity, and the defendant’s having lain by till the death of the agent by whom the business was negotiated, and till all evidence of the transaction, except what he himself has disclosed, was lost, might perhaps have been a sufficient answer to the application, without entering further into the merits of it. But taking for granted that the facts are as they have been ascertained by the defendant, there seems no ground for setting the annuity aside.

And in another case, where it appeared to the Court of King’s Bench that the annuity had been regularly paid and admitted to be due, till the mind of the most material
witness

Ch. I. f. 14.

witness in the business was reduced to a state of mental imbecility, and then the grantor came to complain to the Court of grievous oppression, and of an improper memorial, at a time that witness could give no account of the transaction; the Court determined in favour of the affidavits on the part of the grantee, because, they said, the application should have been made before any payments were made; and that it looked suspicious after the demand had been acquiesced in for several years, to come into that Court to vacate the annuity, when the principal witness for the grantee who negotiated the business, was unable to give any evidence of it.

That was the case of *Cousins v. Thompson*, where *Thompson*, in consideration of 1500*l.* paid him by the plaintiff in November 1792, granted him two annuities during his own natural life, the one of 200*l.* and the other of 50*l.* per annum. *Teasdale* was the money-broker who negotiated the business. *Thompson* now sought to set aside these annuities, on two grounds; first, because the consideration money was paid short by 140*l.* which

Cousins v.
Thompson, Tr.
35 G. 3, MSS.
6 Term Rep.
335, S. C. but
same point does
not appear.

sum was given to *Teasdale* for his trouble in the business. And secondly, because the consideration was not set forth in the memorials, pursuant to the Annuity Act.

To shew there was no ground for this application to the Court, *Cousins* in his affidavit swore positively that he paid down 1200*l.* in cash and bank-notes, as the consideration of the annuity of 200*l.*; that *Thompson* counted the money, and put it into his breeches pocket; and that he left *Thompson* and *Teasdale* together; but whether *Thompson* made *Teasdale* a present of 140*l.* or any other sum, he did not know. *Teasdale* first applied to him for this money, and told him he came from *Thompson*. The very next day *Teasdale* applied to him for a further sum of 300*l.* for *Thompson*, which he received, and for which *Thompson* granted him another annuity of 50*l.* per annum. Although these annuities were granted in 1792, and although *Thompson* had two executions in his house, for two payments that had become due in 1793, he made no complaint till 1795, when *Teasdale* was a beggar in *St. Martin's* Workhouse, and in a state of mental

tal imbecility, so that he could give no account whatever of the transaction.

In support of this application it was contended, that the consideration was not only not set forth in the memorial, but there was no allegation that it was paid at all. And *Thompson* positively swore, that in consideration of the last annuity of 50*l.* he had received *Teasdale's* draft on his banker for only 28*ol.* but that he had never received one farthing of the money. But

The Court, after looking at the affidavits on both sides, said, they were always anxious to carry into effect the valuable purposes of this act; but, at the same time, in doing rigid justice, they must take care and not go beyond the mark. They were of opinion, that the turn of the scale in this case ought to be given to the affidavits on the part of the plaintiff, inasmuch as they were fully confirmed by all the transactions that followed. The annuities were granted in *November 1792*,—things go on till 1793; when two payments become due. All was right then according to *Thompson*, for two executions came

came into his house, and he actually makes them the payments. If the consideration money had not been paid, that would have been a good answer to those executions; and it was to have been expected that he would make a stand then, and have brought forward this application to the Court. But instead of that, he is silent, till the mind of *Tesdale*, the most material witness in this business, is reduced to a state of imbecility; and then it is, for the first time, when this man can give no account of the transaction, that *Tompson* comes into this Court, and complains of grievous oppression.—Their Lordships were unanimously of opinion that the rule ought to be discharged.

Ch. I. f. 14.

A memorial shall be registered, &c. before any action shall be brought on any judgment already entered, &c.] “A *scire facias* to revive “a judgment, which has been entered up on “a bond securing an annuity granted before “the Annuity Act passed, is an action with- “in this clause of the act.”

It was so decided in the case of *Fenner* against *Evans*, where an annuity had been

R

granted

Fenner v. Evans
1 Term Rep.
267.

granted by the plaintiff to the defendant before the passing of the Annuity Act, the consideration of which was enrolled in the memorial to be 1000*l.* but in fact the plaintiff had received only 700*l.* in money, and a *respondentia* bond for 27*l.* and there was a deduction of 2*g.* for law charges.

A *sci. fa.* had issued since the Annuity Act to revive the judgment, and execution had been taken out upon it.

The Counsel who shewed cause against a rule, which had been obtained to set aside the *scire facias*, and all the subsequent proceedings, contended, that as the annuity was granted before the passing of the Annuity Act, the grantee was only obliged to enter a memorial before execution was taken out, and therefore that the rule, which was intended to set aside the *scire facias*, as well as the execution, ought to be discharged. On the other side it was insisted, that as the real consideration of the annuity did not appear on the memorial, the grantor was entitled to some relief under the Annuity Act. But, as the judgment itself was regular (it having been

been obtained before the passing of the Annuity Act) they had only made application to the Court, to prevent a revival of that judgment, by setting aside the *scire facias*. For any proceeding to revive a judgment on an annuity, granted before the passing of that statute, was as much within the words and meaning of the act, as any deed or instrument for securing an annuity granted subsequent to it.

Ch. I. f. 14.

Willes J.—This is a proceeding within the intent and meaning of the act, therefore the rule must be made absolute.

Alaburtt J.—The execution must certainly be set aside; and the only question is as to the *scire facias*: but a *scire facias* is an action, and then this comes within the second section of the act, for the words are, “that no action shall be brought on any such judgment already entered, &c.” The *scire facias* therefore, as well as the execution, must be set aside.

Buller J.—There is no doubt but that a *scire facias* is an action; and on that ground

R 2

it

Ch. I. c. 14.

it has been held that a plea to a *scire facias* must conclude, "if the plaintiff ought to have or maintain his action (a)." Rule absolute.

Winter v.
Kretchman, 2
Term Rep. 46.

So also in the case of *Winter* against *Kretchman*, which was *scire facias* to reverse a judgment by the assignees of a bankrupt, *Buller J.* said, that it had been held in a variety of cases that a *scire facias* was an action (b).

Craufurd v.
Caines, 2 Hen.
Bl. 438.

In the case of *Craufurd* and others, ex-cutors of Sir *Hew Craufurd*, against *Caines*, the Court of Common Pleas decided, that a fine, in which there was no intrinsic defect, or irregularity in the mode of levying it, which had been levied of a rent-charge, assigned by way of annuity, was not such an action within the fourth section of the annuity act, or such an assurance within the meaning of the third section, as would give them authority to set aside the annuity deeds on account of a defective memorial, there being

(a) 2 Will. 251.

(b) Vide 2 Bl. 1227. 2 Lord

Raym. 1048, 1253.

neither

neither a warrant of attorney to enter, nor any judgment actually entered up; so that they had no jurisdiction over the subject matter.

Ch. I. f. 15.

SECT. XV.

Of the Jurisdiction of the Courts wherein any Judgment is entered on an application under the Annuity Act; and herein where they have Jurisdiction before any Action brought, or any Judgment entered; and how far their Power extends.

THE Court in which any judgment is entered up as the security for an annuity, has an equitable jurisdiction and control over such judgment, and on application will examine into the consideration on which it was founded.

17 G. 3. c. 26, ante 7.

Ch. I. s. 15.

Haynes v. Hare,
1 H. Bl. 659.

That appears from the case of *Haynes* against *Hare*, where a bill had been filed in the Court of Chancery to redeem an annuity secured by a bond and judgment, stating that there was an agreement between the parties that it should be redeemable at a certain time, but no such agreement appearing in the bond, Mr. J. *Buller* (who sat for the Lord Chancellor *Thurlow*) dismissed the bill, on the ground that parol evidence could not there be received in contradiction to the annuity bond; and recommended an application to the Court of Common Pleas, in which the judgment was entered: accordingly an application was made to that Court respecting the admissibility of such evidence, where it was also rejected on the same ground; and

Lord *Loughborough* Ch. J. in delivering the opinion of the Court, said,—The application was made to this Court, on the ground that the security being a judgment entered on a warrant of attorney, it was in its nature made under the sanction of the Court; that the Court had therefore a control over it, would examine into the consideration on which

which it was entered up, and not permit the party to avail himself of it, so as to receive more than in justice he is entitled to take. The case comes before the Court, as it fitly and properly should, without any prejudice at all from what has passed in the Court of Equity; for the application to the Court of Equity was founded on circumstances very different from what might appear to this Court sufficient on this species of application, for interposing by the authority, which it is necessary every Court should have, whose records are made matters of security, and enquiring into those securities which proceed on the assumption of a suit, which in fact was never brought. But when the Court is exercising its authority with respect to judgments entered, this principle is clear, that in judging of the transaction which is the foundation of the judgment, they will find themselves governed by the same rules which the law has prescribed; as if the transaction itself, independent of the judgment, were before the Court in the form of an action. We have not a greater latitude, by having an authority over the judgment en-

tered up, than in the decision of the question between the parties themselves.

It seems fully settled also that a warrant of attorney given to confess a judgment in any Court, gives that Court a summary jurisdiction to interfere in any transaction relating to such warrant, before any judgment has been actually entered up.

Ex parte Chester, 4 Term Rep. 694.

Thus in the case *ex parte Chester*, where a bond and warrant of attorney to confess a judgment thereon in the Court of King's Bench was given to secure an annuity, and a rule had been obtained, calling on the grantee to shew cause why the bond and warrant of attorney should not be set aside, because the memorial did not contain the date of the latter. The Counsel who shewed cause, contended that the Court had no jurisdiction at all in that case, the grantee having neither entered up judgment on the warrant, or instituted any other proceeding in the Court, and that the Annuity Act only gave jurisdiction to the Court "in which any action was brought, &c." In answer to which objection,

The

The *Court* said, that the warrant of attorney gave them a jurisdiction, for that it was a proceeding in the Court, and was of greater importance than the commencement of an action in the regular course; because it enabled the party to sign judgment immediately without any application to the Court, and made the rule absolute as to the warrant of attorney.

Ch. I. f. 15.

The same point was determined in the case of *Thurkill* against *Wallace*, which was also an application to the Court of King's Bench upon the annuity act, and there they said that independent of that act, it had been long ago settled upon much argument and deliberation, that the Court has a summary jurisdiction over every warrant of attorney to enter up judgment in the Court, before any judgment has been actually entered up, and may, if they see proper, direct it to be cancelled, to prevent any improper use being made of it.

Thurkill v.
Wallace,
4 Term Rep.
695, n.

So also in a case before the Court of Chancery, respecting the validity of the memorial of two annuities assigned out of a former

Duke of Bolton
v. Williams,
4 Bro. Ch. Ca.
310.

former annuity, Lord *Loughborough* Chancellor, when speaking of the jurisdiction of the Courts, said, that the Court could go no further than the application before them, yet where their own process is made the means of a conveyance, they can take notice of it upon motion.

And from another report of the case above cited (*a*), it appears that the Lord Chancellor *Loughborough* said, "The Courts of common law, which will upon their general jurisdiction enter into the validity of the warrant of attorney or judgment upon motion, in the particular application under the act will only set aside the judgment, or execution, or vacate the warrant of attorney; but the jurisdiction does not extend to ordering the bond to be delivered up, and if ever done it has been done inadvertently.

And the same doctrine seems confirmed by what the *Court* of King's Bench said in the case of *Garrod* against *Saunders*, ante 233, namely, "that they had no power to order a lease by which an annuity was intended to be secured, to be delivered up to be cancelled because the annuity had never been enrolled

(*a*) 2 Vez. jun.
138.

enrolled according to the act; but that the lease was a nullity by reason of the first clause in the act, therefore it was immaterial whether it was delivered up or not.

Ch. I. f. 15.

A fine levied of a rent-charge (in which there is no intrinsic defect, or irregularity in the mode of levying it) assigned by way of annuity, will not give any Court authority to set aside the securities, on account of a defective memorial, if there is neither a warrant of attorney, nor judgment actually entered up in the Court to which the application is made, because the fine gives them no authority to interfere, being neither an action or assurance within the annuity act.

That appears from the case of *Craufurd and others*, executors of *Sir Hew Craufurd*, against *Caines*, the circumstances of which case were the following: *Anne*, the wife of the defendant, was first married to *William Blomberg*, who left her at his death, lands in *Yorkshire* of the value of 1200*l.* a year, for her life. She afterwards married *Walter Nisbet*, which marriage was dissolved by act of parliament, by which the lands were confirmed to *Nisbet* during their joint lives, subject

Craufurd v.
Caines, 2 Hen.
Bl. 438.

jeſt to a rent-charge of 200*l.* a year, which was thereby ſettled on the wife, during the ſame period; ſhe then married the defendant *Caines*, who together with her assigned the rent-charge to *Sir Hew Craufurd*, during the joint lives of *Niſbet* and her, and by the ſame deed covenanted to levy a fine of it, and further granted a rent-charge to *Sir Hew* of the ſame ſum, for ninety-nine years, to be computed from the death of *Niſbet*, in caſe he ſhould die in the life-time of *Anne*; if ſhe ſhould ſo long live, and alſo demiſed the lands to a truſtee for a long term of years, to be computed in the ſame manner, in truſt for the better ſecuring the rent-charge. A fine *ſur cognizance de droit tantum* was accordingly levied by the defendant and his wife, and he gave as a farther ſecurity, a bond and warrant of attorney to confeſs a judgment in the Court of King's Bench. A motion was ſoon afterwards made in that Court to ſet aſide the annuity; but pending the rule *Sir Hew* died, no judgment having been entered on the warrant. And now a rule was granted in this Court, to ſhew cauſe why the annuity ſhould not be ſet aſide, the deed, bond, &c. given up to be cancelled,

cancelled, and the fine vacated, on the ground that the memorial did not truly set forth the consideration, 1700*l.* being the sum stated to have been paid, when in truth part of it was kept back by *Sir Hew*, that the demise to the trustee was omitted, and no mention made of the fine or the covenant to levy it.

The Counsel in shewing cause said, this application, if made at all, ought to be made to the Court of King's Bench, in which the warrant of attorney was given, and where a motion to that effect had already been made. The only part of the transaction, of which this Court can take cognizance, is the fine; but as that was regularly levied, and nothing appears to impeach its validity, it must stand. Another objection to the rule is, that this is one of the excepted cases in the annuity act, the eighth section (*a*) of which enacts, that nothing in that act contained shall extend to any annuity granted "under any authority or trust created by act of parliament." But however that may be, it is obvious that nothing has been done in this case, to give this Court jurisdiction of the subject matter.

(*a*) Ante 14.

On

Ch. I. c. 15.

On the other side it was said, With respect to the objection that the application ought to have been made to the Court of King's Bench, it is to be observed, that the warrant of attorney, which was to confess a judgment, in an action at the suit of *Sir Hew Craufurd*, was at an end with his death. It would therefore be useless to apply to that Court. The fine gives this Court jurisdiction. It is an assurance according to the terms of the act, and comes within the principle of those cases in which a jurisdiction has been assumed, and he cited *Haynes v. Hare*, ante 240, and *ex parte Cbeſter*, ante 248.

A fine is also the function of the Court to the agreement of the parties, where an *action* has been brought, and if there is good cause, they will order it to be vacated. *Cro. Eliz.* 531. *Hubert's case*, 3 Lev. 36. *Hutchinson's case*, 3 Wils. 115. *Watts v. Birkett*. The memorial is defective in not stating the consideration truly, and also in omitting to state the levying the fine, which was in the nature of a fresh grant, distinct from the assignment, and which alone conveyed the interest of the wife. And the memorial being void in part, is void in the whole. As to the argument

Of the
gum
in the
that
spect
the a
Nisbe

T
opini
mori
judg
Cour
ter in
them
within
the st
was n
there
gular
no ac
vacat

In
judgm
dictio
suffer
cause

argument that this is one of the excepted cases in the annuity act, it must be remembered, that the annuity in question, as far as it respects *Sir Hew Craufurd*, was not created by the act for dissolving the marriage between *Nisbet* and the wife of the defendant.

The *Court*, without giving any decided opinion as to the alledged defects in the memorial, held, that as there was neither a judgment nor warrant of attorney in this Court, they had no jurisdiction of the matter in question; that the fine did not give them jurisdiction, for it was not an action within the meaning of the fourth section of the statute, nor was it such an assurance as was meant by the third section; and that there was no intrinsic defect in it, or irregularity in the mode of levying it, they had no authority to interfere, and order it to be vacated. Rule discharged.

If the validity of an annuity has been in judgment before a Court of competent jurisdiction, the Court of King's Bench will not suffer the objection to be stirred again, because they hold themselves bound by any judicial

Ch. I. c. 15.

judicial decision of a Court having competent jurisdiction over the subject matter, if the point has been directly before such Court; but that is not the case where the question has only incidentally occurred, and has not been positively decided.

Hart v. Lovelace,
Iace, 4 Term
Rep. 471,
ante 191.

As in the case of *Hart v. Lovelace*, where a rule had been obtained, calling on the plaintiff and another to shew cause why the judgment, an indenture, a bond and warrant of attorney given to secure an annuity should not be delivered up to the grantors to be cancelled, on the ground that the memorial was defective. Where it appeared that a bill had been filed in the Court of Chancery by the grantees of several annuities, praying amongst other things, that an account might be taken of what was due to them in respect of their annuities from certain sums of money on which they were charged by the grantor: in that suit there had been a decree referring it to the Master to inquire into the claims of the several parties, all of whom attended the Master, and litigated their several priorities and rights touching these annuities, but no objection

was

Dft

was a
fect in
did th
ports,

It

for th
was d
the ob
nuity.
argue
opinio
were
take a
ceedin
matter
was di
and ev
to esta
swer t
occur
ward,
the pa
suffer:
compe
to this
they m

was at that time taken concerning any defect in the memorial or enrolment; neither did the Master notice any defect in his reports, which was afterwards confirmed.

It was stated by the Counsel who applied for the rule, that when the suit in Chancery was depending his client was not aware of the objections to the memorial of this annuity. The Counsel who shewed cause argued, that supposing the Court to be of opinion that any objections to the memorial were well founded, it was now too late to take any advantage of them; for in the proceedings of the Court of Chancery in this matter the validity of all the several annuities was directly in question before the Master, and every advantage was taken by the party to establish their rights. That it is no answer to say that this objection did not then occur; if it might have been brought forward, and was not, that was *laches*, for which the party who was guilty of the *laches* must suffer: but after the judgment of a Court of competent jurisdiction decreeing a priority to this annuity over the claims now made, they must be precluded for ever, otherwise

S there

Of the Jurisdiction of the Courts, &c.

there would be no end to litigation. That the validity of the annuity is now passed *in rem judicatam*, and cannot be questioned again.

At all events this rule cannot be made absolute; for none of the objections arise on the fourth section of the annuity act, which alone gives jurisdiction to the Court to order the deeds to be cancelled for the objections mentioned in that clause; and in *Garwood v. Saunders*, 6 Term Rep. 403, ante 233, the Court of B. R. held, that there was no reference from the fourth to the first section. The consequence of which is, that though the deeds in question may be void, the Court cannot grant what is prayed for by this rule, not having authority to order them to be delivered up.

Lord Kenyon Ch. J. stopping the Counsel on the other side said, "In the course of this argument I have had some difficulty in my mind respecting the decree in the Court of Chancery. If this question had been brought before that Court, and received a judicial decision, I should have thought myself bound by it, as being the judgment of a Court having competent jurisdiction over the

Ch. I. c. 15.

the subject matter : but the proceedings there were *diverso intuitu*; that suit had a different object in view, and the question before us did not arise in that Court.

Große J. and *Lawrence J.* said that this Court was not precluded by the proceedings in Chancery from entertaining this application, because this question was not agitated in that Court, though if it had, they thought it would have been conclusive here. Rule absolute.

Where an illegal assignment, for instance, such as the accruing pay of a military officer, has been made for the purpose of securing an annuity, the Courts wherein there have been any proceedings respecting the annuity, by virtue thereof, have a power over the transaction, and on application for that purpose, will order the annuity deeds to be delivered up to be cancelled.

As was done in the case of *Barwick v. Read*, where the defendant, who was a Lieutenant of Marines, assigned his full pay to the plaintiff, in trust, first of all to pay and

satisfy

S 2

Barwick v.
Read, 1 Hen.
Bl. 627.

satisfy himself (the plaintiff) an annuity of 20*l.* per annum, and then to pay over the surplus to the defendant, and also gave a bond and warrant of attorney, as a further security. In *Hilary Term 1791*, a rule was granted by the Court of *Common Pleas*, to shew cause why the deed of assignment, bond, and warrant should not be given up to be cancelled, on the ground that the full pay of a military officer could not be legally assigned. When the motion was made, the Court intimated a clear opinion that such an assignment was illegal, it being contrary to the policy of the law that a stipend given to one man for future services, should be transferred to another who could not perform them. However the rule was enlarged till the *Easter Term* following, when, on the motion of the plaintiff's Counsel, it was made absolute (*a*), no cause being shewn, but the Court seemed to retain their former opinion.

(*a*) When the rule was granted, Lord Loughborough Ch. J. said, he recollected a similar decision in the Court of Chancery, in the case of *Ross*, the Army-Agent; and Mr. Justice Gould referred to the case of *Oliver v. Emsonne*, Dyer 1 b. as confirming the general principle which

Of 1

where
the i
was
the a
also
that
assign
the
Mas

1

the f
has
of th
illeg
ther
subje

which
2 Bl. 1
derdal
Vide 1
cited a

Ch. I. f. 15.

And in the case *ex parte Chester*, where several objections had been taken to the informality of the memorial, and a rule was made absolute for setting aside one of the annuity deeds on that account, there was also another objection on the merits, namely, *that no consideration was given for the deed of assignment* which had been given to secure the annuity, and that was referred to the Master. 4 Term Rep. 694, n.

It may be fairly inferred therefore from the foregoing cases, that wherever a Court has any authority to interfere in transactions of this kind, it may examine into the want or illegality of the consideration, and that in either case it has sufficient jurisdiction over the subject matter to set the annuity deeds aside.

which the Court laid down. See also *Stuart v. Tucker*, 2 Bl. 1137. *Flarty v. Odium*, 3 Term Rep. 681. *Lidderdale v. The Duke of Montrose*, 4 Term Rep. 248.—Vide 1 H. Bl. 628, n. where these authorities are all cited and arranged.

CHAP. II.

SECT. I.

Directions relating to the Enrolment of the Memorial, and the Clerk's Fees thereon.

Directions relating to the Enrolment of Memorials.

BY 17 Geo. 3. c. 26, s. 5, it is further enacted, "That a particular roll shall be provided and kept by the clerks of the enrolments in Chancery, or their deputy, on which such memorials shall be entered, and that every such memorial shall be duly enrolled in order of time as the same shall be brought to the office, and the said clerks of the enrolments, or their deputy, shall specify upon the roll the certain day, hour, and time, on which such memorial is brought to the office; and shall grant a certificate of the enrolment thereof, when required; and that there shall be paid for the enrolment of every such memorial the sum of one shilling, and

Clerk's Fees.

and
two
shall
the
one
ever
fee
offi

An

A
sec
assu
me
is \$
(a)

and no more, in case the same do not exceed two hundred words, but if such memorial shall exceed two hundred words, then after the rate and proportion of sixpence for every one hundred words, and the like fees for every certificate and copy given; and the fee of one shilling for every search in the office, and no more.

Ch. II. s. 2.

SECT. II.

An Epitome of the Practice relative to the Enrollment of the Memorial.

A Memorial of every bond, deed, instrument, though it be only a collateral security given by a third person (*a*), or other assurance, a warrant of attorney (*b*), or judgment (*c*), by which any annuity or rent-charge is granted or secured (*d*), or by which any

(*a*) Ante 33. (*b*) Ante 22. (*c*) Ante 49. (*d*) Ante 24.

Ch. II. s. 2.

annuity already granted, is assigned, if such assignment takes place before the original securities have been registered (*e*), of more than the annual value of ten pounds, unless it be given by will or by marriage settlement, or for the advancement of a child, or unless it is secured on a sufficient pledge of lands of equal or greater annual value, whereof the grantor was seised in fee-simple, or fee-tail, in possession at the time of the grant, either a legal or equitable title is sufficient (*f*), or stock in the public funds, the dividends whereof are of equal or greater annual value than the annuity, or unless it be granted or assigned for any other than a pecuniary consideration (*g*), but the consideration must not be in goods (*h*), or an illegal one (*i*), must be taken to the enrolment office in Chancery-lane (*k*) within twenty days, exclusive of the day of the execution of such deed &c. (*l*), to be enrolled on a particular roll kept there for that purpose, otherwise every (*m*) such deed, &c.

(*e*) Ante 38. (*f*) Post chap. 5, s. 1. (*g*) Ibid. s. 3. (*h*) Vide ante 201. (*i*) Ante 259. (*k*) See the table post, sect. 3, for the hours of attendance there, and the days on which there is any business done at the office. (*l*) Ante 58. (*m*) Ante 56.

will

will be absolutely void (*n*). Such memorial of every (*o*) annuity granted or secured by such deed, &c. must contain the day and year on which each deed, &c. bears date (*p*), the names and interests of all the parties, but it is sufficient if the christian names appear at full length in any part of the securities (*q*), and for whom any of them are trustees, and for whom all those trusts, which are created in consequence of the annuity (*r*), are granted, and the names of all the witnesses, not in general terms, but specifying what particular deed each attests (*s*), the annual sum to be paid, the name of the person for whose life the annuity is granted, and the consideration of the same, and every thing which forms any part of such consideration, must be set forth (*t*), and also the names of all the persons concerned in the payment of it, and if an agent or servant, it should be so stated, and his name should appear (*u*), and to whom and on whose behalf it was paid, and the actual mode of such payment. For instance, whether it be paid in money, which

Ch. II. f. 2.

(*n*) Ante 172. (*o*) Ante 112. (*p*) Ante 30. (*q*) Ante 166.
(*r*) Ante 143. (*s*) Ante 168. (*t*) Ante 64. (*u*) Ante 166.

bank

bank notes are considered to be, and may be stated as such (*v*), or by bankers checks or promissory notes, or by bills of exchange, and if it is paid in any other than bank of England notes, the dates and sum, and time of payment, and all other particulars should be accurately set forth in the memorial (*w*). It is not sufficient to state the consideration as being so much money paid to the use of the grantor, unless the whole of it is actually paid in money to him; but it is not necessary that it should be paid down at the time of the grant, provided it is actually paid to him before the annuity is registered (*x*): if the consideration is paid over by the grantee to a third person with the consent of the grantor, or is accounted for to the grantor by a note from a third person, it must be so stated (*y*); or if the consideration is partly paid in money, and partly by giving up a former annuity, that circumstance must appear (*z*); and indeed if any thing else than money actually advanced by the grantee, or by any one else, or by any other person than

(*v*) Ante 114. (*w*) Ante 64. (*x*) Ante 191. (*y*) Ante

71. (*z*) Ante 104.

the

the
ed (*v*)
nuit
at th
agre
decr
of th
cific
in th
tran
all in
men
paid
requ
cont
and
tran
ther
assur
sider
part
but
the

(3)
(7) An

the grantee, such as a judgment recovered (3), or an old debt (4), or a former annuity then given up, and the sum completed at the time of the grant (5), or if there is an agreement that the annuity should be redeemable upon terms (6); each and every of the above facts must be particularly specified in the memorial. And any mistake in the statement, if material, will vitiate the transaction (7). If the consideration is paid all in money, though by several distinct payments, the gross amount of the whole sum paid is a sufficient description (8). The act requires that the deeds and memorial should contain the true consideration as really paid, and if either of them describe it falsely, the transaction will be void (9). And where there are several deeds which constitute one assurance for the same annuity, the consideration need be stated only once in any part of that assurance, all the deeds making but one assurance (10), and once only in the memorial, but there should be such

(3) Ante 104. (4) Ante 102. (5) Ante 104. (6) Ante 74.

(7) Ante 156. (8) Ante 107. (9) Ante 68. (10) Ante 118.

Practical Directions.

a reference from the memorial to each deed, and not merely from one deed to another, as to make it evidently appear that they all relate to the same transaction (11), and in that case, though the consideration be stated in each deed, &c. it need be stated but once in the memorial; the consideration may be stated in any form of words, even by way of recital, without any averment of the facts, or in any way, provided it is expressed clearly and unequivocally, and the memorial contains a full and true disclosure of all the facts relative to the transaction and the consideration for the annuity (12). No part of the consideration ought to be returned to the person advancing it, or retained by the purchaser, or any other person, on any pretence whatever (13).

The act extends equally to annuities granted before and after it was passed (14), and requires that, whenever any step is to be taken respecting an annuity granted before

(11) Ante 123. (12) Ante 131. (13) Ante 9. (14) Ante 69.

the

the act passed, an enrolment should be made like to the memorial, which ought to be made at the making a new grant, that is, of the state of the parties as they are at the time of the enrolment (15), and the requisites of the act are not complied with, unless such a full, clear, and true disclosure of the transaction between the parties appears upon the memorial, as makes the whole dealings evident to any person reading the memorial only (16).

Ch. II. c. 2.

The Deputy-Clerk is bound to enrol each memorial in its turn, as it is brought in to the office, and to specify upon the roll, the certain day, hour, and time, on which it was brought there, and must grant a certificate thereof when required, which it is always best to take. For the enrolment of each memorial pay one shilling only, unless it exceed two hundred words, then after the rate of six-pence for every one hundred words, and the like fees for every certificate and copy given, and the fee of one shilling for every

(15) Ante 43. (16) Ante 95.

search

search in the office. The purchaser of the annuity ought to pay the expence of the memorial (17), and if it is charged to the grantor, and deducted out of the consideration money, it will avoid the annuity (18).

The sole use of the memorial being to notify to the world that such an annuity has been granted, when it has done that according to the requisites of the act, it has done its office, and all that it is necessary for the parties to attend to: Therefore such things as are incident to the grant, and cannot in any shape be looked upon as making a part of the consideration, need not be noticed therein; for instance, where a rent-charge has been granted, the power of distress in case the payment be in arrear, need not be re-gistered, because that power is incident to the rent-charge by the common law. Neither does the act say, that the memorial shall contain all the covenants, and every part of the deed by which an annuity is granted,

(17) Ante 161. (18) Ante 159.

but

but it specifies what particular parts of the deed are required to be memorialized.

Ch. II. c. 2.

So that, besides what the act specifies, no part of the deeds need be stated, unless indeed, some of the covenants are such, as by the express agreement of the parties make a part of the consideration, as in the case where the clause of redemption upon terms settled at the time of the grant, was sworn to be a great inducement for granting the annuity. After an annuity has been once registered, although it may be afterwards redeemed or re-purchased, the act does not authorize the Clerk of the Enrolments to cancel the memorial, or strike names of the parties off the roll (*a*).

(*a*) I am informed, that the practice is, after such redemption has taken place, to enter a minute of a conveyance on the roll, opposite to the former entry, by way of notifying that the transaction is at an end. There seems little doubt but the Legislature intended that the names of the parties concerned in purchasing grants of this nature, should remain on the roll, to check such proceedings, as far as the publicity of them would conduce towards it, and if one may judge from the dissatisfaction, the want of such an authority to erase the names gives, it has its intended effect.

The

The observations relating to the memorial, except such as are referred to in the notes, do not appear in any report of the cases in which many of them occurred, because, perhaps, as they did not immediately relate to the point before the Court, it was not thought necessary to insert them; but they were most of them taken by myself, for the express purpose to which they are now applied, and may be relied on as the obiter dicta of the several Judges who made them.

A T
don
ope
Jan. 6
ditto 1
ditto 3
Feb. 2
March

May 2
June 4
ditto 24
ditto 28
July 2
August
ditto 24
Sept. 22
ditto 21
ditto 22
ditto 29
Oct. 18
Nov. 1
ditto 24
ditto 4th
ditto 5th
ditto 9th
ditto 17
ditto 30
Dec. 21
ditto 25

The
days; av
evening
respecting
feal of N
nor after
Michael
at it is li
not regul
light, or

Practical Directions.

273

Ch. II. f. 3.

SECT. III.

A TABLE of the Days on which there is no Business done at the Enrolment Office; and of the Hours it is open on such Days as Business is done there.

Jan. 6th	Epiphany	- - - -	Office shut
ditto 18th	Queen's Birth-Day	- - - -	ditto
ditto 30th	K. Charles the 1st's Martyrdom	- - - -	ditto
Feb. 2d	Purification of the Virgin Mary	- - - -	ditto
March 25th	Lady Day	- - - -	ditto
	Good Friday	- - - -	ditto all the week
	Easter	- - - -	Office shut
	Ascension Day	- - - -	ditto
May 29th	King Charles 1st restored	- - - -	ditto all the week
	Whituntide	- - - -	Office shut
June 4th	King George 1st born	- - - -	ditto
ditto 24th	St. John the Baptist	- - - -	ditto
ditto 29th	St. Peter and Paul	- - - -	ditto
July 25th	St. James	- - - -	ditto
August 12th	Prince of Wales's Birth-Day	- - - -	ditto
ditto 24th	St. Bartholomew	- - - -	ditto
Sept. 2d	London burnt	- - - -	ditto
ditto 21st	St. Matthew	- - - -	ditto
ditto 22d	Coronation	- - - -	ditto afternoon
ditto 29th	St. Michael	- - - -	Office shut
Oct. 18th	St. Luke	- - - -	ditto
Nov. 1st	All Saints	- - - -	ditto
ditto 2d	All Souls	- - - -	ditto
ditto 4th	King William born	- - - -	ditto afternoon
ditto 5th	Gunpowder Plot	- - - -	Office shut
ditto 9th	Lord Mayor's Day	- - - -	ditto afternoon
ditto 17th	Queen Elizabeth born	- - - -	ditto
ditto 30th	St. Andrew	- - - -	Office shut
Dec. 21st	St. Thomas	- - - -	ditto
ditto 25th	Christmas Day	- - - -	ditto all the week.

The Office is open from nine in the morning till two, on days when business is done, and from five till eight in the evening, when light, or when they have candles: the rule respecting which is, that no candles are lighted after the last seal of Michaelmas Term, till the first day of Hilary Term; nor after the second seal of Hilary Term, till the first day of Michaelmas Term; and the Office continues open as long only as it is light on such days as they do not light candles, and is not regulated by the same hours in the evening as when it is light, or when they light candles.

T

SECT.

Memorials.

SECT. IV.

Forms of different Memorials.

I. Of an Annuity secured by Bond and Warrant of Attorney.

A Memorial to be enrolled pursuant to Act of Parliament.

Abraham Moore } **O**f a bond or obligation bearing date the
 to } 12th day of *August*, in the
 John Heys. } year of our Lord 1765, from *Abraham Moore*, of *South Tanton, Devon*, Esq; to *John Heys*, of *Wigan*, Esq; in the penal sum of 5000*l.* with a condition thereunder written, for making void the same upon payment, by the said *Abraham* unto the said *John*, his executors, administrators, or assigns, for and during the natural life of him, the said *Abraham*, of one annuity, or clear yearly sum of 200*l.* of lawful money of *Great Britain*, by equal quarterly payments, on the days therein mentioned, in each and every year,

year, and the consideration of granting such annuity is the sum of fifteen hundred pounds of like lawful money (*here state the exact manner in which the consideration is paid, and by whom*) paid by the said *John Heys*, in cash, to the said *Abraham*, on the day of the date of the said bond, and for which a receipt is signed by the said *Abraham* on the back of the said bond. The execution of which bond, and the signing of which receipt, are witnessed by *John Hibbert*, of *Barnes*, in the county of *Surrey*, gent.

And of a warrant of attorney, bearing date the same 12th day of *August*, 1765, executed by the said *Abraham*, and directed to *William Meyrick*, gent. or any other attorney, empowering him to enter up judgment on the above mentioned bond, at the suit of the said *John Heys*, in his Majesty's Court of K. B. at *Westminster*, the execution of which warrant of attorney by the said *Abraham*, is also witnessed by the said *John Hibbert*.

Memorials.

II. Of an Annuity or Rent-charge by Indenture, subject to Redemption.

A Memorial to be enrolled pursuant to Act of Parliament.

Abraham Moore } **O**F an Indenture
to } tripartite, being
John Heys. } the grant of an annuity,
bearing date the 12th day of *August*, in the
year of our Lord 1765, and made between
Abraham Moore, of *South Tanton*, Esq; of the
first part, *John Heys*, of *Wigan*, Esq; of the
second part, and *William Meyrick*, of *Barnes*,
gent. (a trustee named by and on the behalf
of the said *John Heys*) of the third part.—
Whereby, in consideration of four hundred
pounds, of lawful money of *Great Britain*,
paid in cash, by the said *John*, and of an as-
signment of a fourth share in *Drury-Lane*
Theatre to the said *Abraham*, made by the
said *John* to the said *Abraham*, by a certain
indenture of bargain and sale, a memorial
whereof is herewith registered; and also in
consideration of five shillings in hand, paid
to the said *Abraham* by the said *John*, he the
said

said *Abraham*, for himself and his heirs, did give, grant, bargain, sell, and confirm unto the said *John*, and his assigns, for and during his natural life, one annuity, or yearly rent-charge of 100*l.* of lawful money of *Great Britain*, to be issuing and payable yearly during the life of the said *John*, out of all that (*stating the premises*) &c. **To hold** and enjoy the said annuity of 100*l.* unto the said *John* and his assigns, during the term of his natural life, clear of all taxes and deductions whatsoever, payable quarterly on the days and manner therein mentioned. **And** for the better securing the payment of the said annuity, and also in consideration of 5*s.* to the said *Abraham*, paid by the said *William Meyrick*, he, the said *Abraham*, did demise unto the said *William* all and singular the therein before mentioned messuages or tenements, lands, and premises, thereby charged with the said annuity. **To hold** the said premises thereby demised unto the said *William*, his executors, &c. from the day next before the day of the date thereof, for the term of ninety-nine years (if the said *John* should so long live) at the yearly rent of a pepper-corn only, if lawfully demanded,

T 3 subject

Memorials.

subject to redemption, upon the due payment of the said annuity, and re-payment of the said consideration, and re-assignment of the said fourth share to the said *John*, in manner therein mentioned; the execution of which indenture and deed of assignment, bearing date the same day and year aforesaid, is witnessed by *Thomas Hunt*, of *Stratford*, gent. and *William Meyrick*, of *Barnes*, gent.

III. Of an Annuity or Rent-charge, secured by Deed, Bond and Warrant of Attorney, and Judgment signed.

A Memorial to be enrolled pursuant to Act of Parliament.

Abraham Moore } **OF** an Indenture of
to } three parts, made
John Heys. } the 12th day of August,
in the year of our Lord 1765, between *Abraham Moore*, of *South Tanton*, in the county of *Devon*, Esq; of the first part, *John Heys*, of *Wigan*, Esq; of the second part, and *William Meyrick*, of *Barnes*, in the county aforesaid, gent. (and which said *William Meyrick* is a trustee

trustee therein nominated and appointed on the part and behalf of the said *John Hays* of the third part, **whereby** it is witnessed, that in consideration of four hundred pounds of lawful money of *Great Britain*, by the said *John*, to the said *Abraham* in hand paid, at or immediately before the sealing and delivery thereof, the said *Abraham* did give, grant, and confirm unto the said *John*, his executors, administrators, and assigns, for and during the term of the natural life of the said *Abraham*, one clear annuity or yearly rent-charge, of one hundred pounds of like lawful money, to be issuing, going, and payable, had, received, and taken, by, and out of, and from, and charged, and chargeable upon, the several lands, tenements, and hereditaments therein particularly mentioned and described, with the usual powers of distress and entry: **And** by which said indenture it was further witnessed, that the said *Abraham*, in consideration of 5*s.* did grant, bargain, sell, and demise the said hereditaments therein mentioned and described, and hereby referred to unto the said *William Meyrick*, to hold the same unto the said *William*, his executors, administrators, and assigns,

Memorials.

assigns, from the day next before the day of the date of the same indenture, for a term of 99 years from thence next ensuing, upon trust for better securing the due and punctual payment of the said annuity, in manner as in the said indenture is mentioned: **And also** of a certain bond or writing obligatory under the hand and seal of the said *Abraham*, bearing even date with the above-mentioned indenture, whereby the said *Abraham* became bound to the said *John* in the sum of 800*l.* with a condition thereunder written for making the same void, if the said *Abraham* should not yearly, during the term of his natural life, well and truly pay unto the said *John*, his executors, &c. one annuity or yearly sum of 100*l.* at the days and times, and in manner and form as therein mentioned, being the same annuity as in the said indenture and herein before is mentioned: **And also** of a certain deed-poll or warrant of attorney, under the hand and seal of the said *Abraham*, and bearing even date with the above-mentioned indenture and bond respectively, whereby the said *Abraham* did desire and authorise *James Dolphin* and *George Barker*, attorneys, of his Majesty's Court of King's

King's Bench, or any other attorney of the same Court, to confess a judgment in the said Court of King's Bench against him the said *Abraham*, in an action of debt on the above-mentioned bond: **And also** of a judgment which was duly signed on the 11th day of *August*, in the said year of our Lord 1765, against him the said *Abraham*, at the suit of the said *John Heys*, in his Majesty's Court of King's Bench, for 800*l.* of debt on the above-mentioned bond, and for 63*s.* costs, by virtue and in pursuance of the above-mentioned deed-poll or warrant of attorney; and which judgment was accordingly entered upon record, as of *Trinity Term*, in the 6th year of his present Majesty: **And all** and every of which said above-mentioned indenture, bond, and warrant of attorney, were each of them respectively executed in the presence of *Samuel Hunt*, of *Houndsbill*, in the county of *Worcester*, Esq. and *Thomas Beaumonts*, of *Goldicot*, in the said county, Esq. who were the subscribing witnesses to each and every of the said deeds: **And** the said sum of four hundred pounds being the consideration money for the absolute purchase of the said annuity, was duly paid to

Form of a Certificate.

Ch. II. s. 4.

to the said *Abrabam Moore* by the said *John Hays* himself, in the presence of the said *Thomas Beaumonts* and *Samuel Hunt*, in manner following, that is to say, one hundred pounds in money, 200*l.* in notes of the bank of *England*, and 100*l.* by a check on Messrs. *Hoares* and Co. bankers, *Fleet-street, London*, dated 10th *August* 1765, and payable on demand, immediately before the execution of the above-mentioned indenture, bond, and warrant of attorney.

A Certificate of the Enrolment of an Annuity.

ENROLLED in his Majesty's High Court of Chancery, at eleven o'clock in the forenoon, on the 12th day of *August*, in the year of our Lord 1793, according to an Act of Parliament made and passed in the 17th year of the reign of his present Majesty.

CHAP. III.

Of the purchasing or procuring Annuities for Infants.

BY 17 Geo. 3. c. 26, s. 6, it is further enacted, That all contracts for the purchase of any annuity with any person being under the age of 21 years, shall be and remain utterly void, any attempt to confirm the same, after such person shall have attained the age of 21 years, notwithstanding; and that if any person shall, either in person, by letter, agent, or otherwise howsoever, procure, engage, solicit, or ask any person, being under the age of 21 years, to grant, or attempt to grant any annuity or rent-charge, or to execute any bond, deed, or other instrument for securing the same, or shall advance, or procure, or treat for any money to be advanced to any person under the age of 21 years, upon consideration of any annuity or rent-charge to be secured or granted by such infant, after he or she shall have attained his or her age of 21 years, or shall induce,

All contracts for the purchase of annuities with infants to be void.

Any person procuring an infant to grant an annuity, &c.

induce, solicit, or procure any infant, upon any treaty or transaction for money advanced, or to be advanced, to make oath, or give his word of honour or solemn promise, that he or she will not plead infancy, or make any other defence against the demand of any such annuity or rent-charge, or the repayment of the money advanced to him or her when under age; or that when he or she comes of age, he or she will confirm or ratify, or in any way substantiate such annuity or rent-charge; every such person shall be guilty of a misdemeanor, and being thereof lawfully convicted in any Court of Assize, Oyer and Terminer, or general gaol delivery, shall and may be punished for the said offence by fine, imprisonment, or other corporal punishment, as the Court shall think fit to award.

or to ratify any annuity when of age, &c.

shall be punished with fine or imprisonment, &c.

SECT. I.

Observations upon the Annuity Act relative to the Contract and the Assurance.

IT may be here observed that the first, third, and fourth sections of this act provide, that unless the requisites they prescribe are complied with, *the deed, bond, instrument, or other assurance*, whereby any annuity is granted, shall be void, without any allusion whatever to the *contract*, and that the sixth section, no longer adverting to the *securities*, provides that all *contracts* for the purchase of annuities with infants shall remain utterly void, and be incapable of confirmation after such infants arrive to the age of maturity. From whence it has been contended (*a*) that as the clauses are differently worded, they therefore require a different exposition; and that as Courts of Law in the construction of the statutes against gaming as applied to money lent (*b*), and money lent (*c*) at play, have, from the man-

(*a*) Powell's Essay on the Law of Contracts, 1 vol. 209. (*b*) 16 Car. 2. c. 7, f. 3. (*c*) 9 Ann. c. 14, f. 1.

ner in which they are worded, held, that there is a clear distinction between the contract and the security, so the same argument applies with equal force to this act. Now had it been looked upon as the intention of the Legislature to distinguish between the contract and the securities, and to leave the former subsisting, though the latter were destroyed, I admit that the cases (*a*) which have been determined upon those statutes, prove that the clauses in this act are so worded as to let in that distinction, and would warrant that construction. But in the cases of *Sbove* and *Webb (b)* and *Straton v. Russell (c)*, the Court of King's Bench considered the contracts void as well as the securities; and it was upon perfectly distinct contracts, from a principle of equity, that they held the parties might recover back their purchase money, when the consideration for which it was given had failed. I therefore apprehend that this manner of wording a statute makes a distinction in those cases only,

(*a*) *Barjeau v. Walmsley*, Str. 1224. *Robinson v. Bland*, Burr. 1077.

(*b*) *Ante* 201. (*c*) *Ante* 207.

Of the Solicitor's, &c. Fees, &c.

287

in which it appears to have been the intention of the Legislature that a distinction should be made; and from those two determinations, it seems clearly to have been the opinion of the Court of King's Bench, that no such distinction was intended in this instance.

Chap. IV.

CHAP. IV.

Of a Solicitor's, Scrivener's, &c. Fees, for procuring Money for Annuities.

BY 17 Geo. 3. c. 26, s. 7, it is further enacted, That all and every solicitors and solicitor, scriveners and scrivener, brokers and broker, and other persons or person, who from and after the passing of this act, shall ask, demand, accept or receive, directly or indirectly, any sum or sums of money, or any other kind of gratuity or reward for the soliciting or procuring the loan, and for the brokerage of any money that shall be actually

Solicitors, scriveners, &c. who shall take more than 10s. for 100l. for procuring monies,

actually and *bonâ fide* advanced and paid, as and for the price or consideration of any such annuity or rent-charge, over and above the sum of 10s. for every 100*l.* so actually and *bonâ fide* advanced and paid, shall be deemed and adjudged guilty of a misdemeanor, and being lawfully convicted of such offence in any Court of Assize, Oyer and Terminer, or general gaol delivery, shall and may for every such offence be punished by fine and imprisonment, or one of them, at the discretion of the Court, and that the person or persons who shall have paid or given any sum or sums of money, gratuity, or reward, shall be deemed a competent witness or witnesses to prove the same.

shall be punished by fine and imprisonment, &c.

and the person paying is a competent witness.

SECT I.

*The Form of an Indictment against a Broker
for receiving more than Ten Shillings per
Cent. for procuring money to be advanced on
a Life Annuity.*

Middlesex, } THE Jurors of our Lord the
to wit. King, upon their oath pre-
sent that *Thomas Beaumonts*, late of *Westmin-*
ster, in the said county, after the passing of a
certain act of parliament made in the par-
liament of our Sovereign Lord *George* the
Third, King of *Great Britain, France*, and
Ireland, &c. at a session thereof holden at
Westminster, in the seventeenth year of his
reign, intituled, “An Act for registering the
grants of life annuities, and for the better
protection of infants against such grants,” to
wit, on the 31st day of *October*, in the 36th
year of the reign of our said Sovereign Lord
the King, and in the year of our Lord 1796,
at *Westminster* aforesaid, in the said county,

U did

Ch. IV. c. 1.

did unlawfully ask, demand, accept, and receive directly of and from *John Toms*, a certain sum of money, to wit, the sum of thirty-nine pounds of lawful money of *Great Britain*, as a gratuity and reward for soliciting and procuring the loan, and for the brokerage of the sum of 400*l.* of like lawful money, which said sum of 400*l.* after the passing of the said act, to wit, on the day and year aforesaid, at *Westminster* aforesaid, in the said county, was actually and *bonâ fide* advanced and paid by one *John Hibbert* to the said *John Toms*, as and for the price and consideration of a certain annuity of 8*ol.* of like lawful money after the passing of the said act, to wit, on the day and year aforesaid, at *Westminster* aforesaid, in the said county, granted by the said *John Toms* to the said *John Hibbert* for the natural life of one *Abraham Moore*, and that the sum of thirty-nine pounds so received by the said *Thomas Beaumonts* as aforesaid exceeds the sum of 10*l.* for every 100*l.* so actually and *bonâ fide* advanced and paid as and for the price and consideration of the said annuity as aforesaid, to the evil example of all others, and contrary

trary to the form of the statute in such case made and provided, and against the peace of our said Lord the King, his crown and dignity.

SECT. II.

What Evidence will support an Indictment for taking more than the Act allows for Brokerage, and what is considered as taking more within the Meaning of the Annuity Act.

ON an indictment on this clause of the annuity act for taking more than ten shillings in the 100*l.* for brokerage of any money that is actually paid for the consideration of any annuity, it is not necessary to prove that the defendant took the exact sum laid in the indictment, though it be not laid under a videlicet.

And on the trial of such an indictment it must be left to the Jury to consider whether

the

U 2

the excess above ten shillings in the hundred pounds were fully taken as a fair charge for drawing the writings and brokerage, or whether it were not so taken as a device to avoid this statute.

The King v.
Gilham,⁶ Term
Rep. 265.

These points appear in the case of *The King* against *Gilham*, where the defendant was indicted on the seventh clause of the annuity act. The first count stated, that the defendant on the first of *February* 1792, “unlawfully did ask, demand, accept, and receive of and from Lord Viscount *Falkland*, *H. Speed*, and *D. Broughton*, 332*l.* 10*s.* as a gratuity and reward for soliciting and procuring the loan for the brokerage of the sum of 2450*l.* then and there actually and *bonâ fide* advanced and paid by *S. Phillips* to them, the said Lord Viscount *Falkland*, *H. Speed*, and *D. Broughton*, as and for the price and consideration of divers annuities or yearly rent-charges, amounting to 350*l.* viz. &c. (setting forth the several annuities) which said sum of 322*l.* 10*s.* for every 100*l.* so then and there actually and *bonâ fide* advanced and paid by the said *S. Phillips* to the said Lord Viscount *Falkland*, &c.” The second count

count stated the money to have been advanced and paid by the defendant as agent for *S. Phillips*, &c. There were two other counts, charging the offence in different ways.

Ch. IV. f. 2.

It was objected at the trial, that the evidence did not sustain the indictment; the charge being that 322*l.* 10*s.* was paid for brokerage of the sum of 2450*l.* and the evidence being, that the defendant, at the time of the money being paid, said that 100*l.* was for the writings (he being an attorney, and having produced them) 100*l.* by way of present, and 5*l.* *per cent.* on the whole sum, viz. 122*l.* 10*s.* Lord *Keppel* overruled the objection, thinking it not material; but he left it to the Jury to consider whether the whole transaction was not a mere device and colour to receive the sum stated under different pretences, but in truth for the brokerage and soliciting of the loan, in fraud of the act of parliament; and the Jury being of this opinion, found the defendant guilty.

A rule nisi having been obtained for a new trial, on the ground that the verdict was against law and evidence; the Counsel who shewed cause said, if this objection could prevail, it would operate as a repeal of the statute; for then those who intended to evade it, would take more than the brokerage allowed under some other name. It was not disputed at the trial, that an attorney might have a fair demand for his business done as such above the brokerage of 10s. *per cent.* but as there was no evidence of a fair bill delivered to the amount of the claim for deeds, or of any work done as an attorney for which such a demand could reasonably be made, it was evidence at least for the Jury to determine, whether the whole, or any part of it, were a colour for soliciting and procuring the loan. Suppose the defendant's demand had been *bonâ fide* only 10l. for business done as an attorney, and he had charged 100l. the Jury would be warranted in attributing the excess to the brokerage, though under a different name. And if any thing beyond the 10s. per 100l. were taken for brokerage, it is sufficient to warrant

Ch. IV. f. 2.

warrant the conviction, although not the exact sum laid in the indictment. For this is not like the case of usury, where the precise contract between the parties must be laid and proved: it is sufficient if the offence be brought within the prohibitory clause of the act which creates it. In an action for usury, it is necessary that the exact sums should be stated, because the penalty is apportioned to the value; whereas here, if any thing, whether more or less, be taken above 10s. per 100*l.* allowed, the offence is the same, and the punishment equally to be inflicted. This, therefore, is more like the case of an indictment for extortion, as to which it was said by *Holt* Ch. J. in *Rex v. Burdet* (a), that "if the indictment be for taking extorsively 20*s.* and there be only proof of 1*s.* yet the defendant is guilty.

(a) 1. Ld. Ray.
149.

On the other side it was argued, that the prosecutor was bound to state the exact sum, in order that the defendant may be apprized of the charge he is called upon to answer, and that it may appear to the Court and Jury, by comparing the evidence with the record, that the offence charged comes with-

in the act of parliament. That it was most like the case of usury, because it is equally founded in contract; and as it would be no answer in that case to an objection of variance between the record and the evidence to say, that it is equally prohibited by statute to take usurious interest, whether more or less, so neither can such an argument avail here: the offence ought in both cases to be charged with certainty. If that be so, the evidence in this case, by the prosecutor's own shewing, did not correspond with the indictment; for whether the defendant had charged too much or too little for drawing the deeds, at any rate he was entitled to something for that business; whereas the indictment alleges that the whole sum of 32*l.* 10*s.* was received by him for brokerage. And if he were intitled to any sum, however minute, for the writings, it is a diminution *pro tanto* from the whole sum, and consequently so much could not be received by way of brokerage.

Lord Kenyon Ch. J.—The offence here consists in taking more than ten shillings for every hundred pounds for brokerage or procuring

curing the loan; and for this purpoſe, the quantum of the exceſs is immaterial. In the caſe of uſury, to which this has been compared, it is material, becauſe in ſetting forth a contract in pleading, it is neceſſary to ſet it out correctly, and prove it as ſet forth. But here the offence is the ſame, whether more or leſs be taken, and the judgment does not depend on the quantum taken, as it does in the caſe of uſury. I cannot get over the caſe cited from Lord *Raymond* (a). If this objection were to be allowed, it would repeal the ſtatute altogether.

Ch. IV. f. 2.

Groſe J.—In caſes of this kind the queſtion muſt be left to the Jury, to conſider whether the defendant really took more than ten ſhillings in the hundred pounds, by way of brokerage; for if he colorably take a large ſum, under pretence that the exceſs above ten ſhillings was received for another purpoſe, that will not avail him. In the caſe of uſury it is always left to the Jury to ſay whether the ſum taken, though oſtenſibly for another purpoſe, was not in reality taken as uſurious intereſt.

Lawrence

(a) Ante 295.

Ch. IV. s. 2.

Lawrence J.—The question here, is not whether the witnesses did or did not prove that the defendant had taken 32*l.* 10*s.* for the brokerage, but whether he did not prove that more than ten shillings in the hundred pounds was taken by the defendant; and if that were proved, it was sufficient to convict the defendant. Rule discharged.

*Broomhead v.
Eyre, MSS. 5
Term Rep. 597,
S. C.*

In the case of *Broomhead* against *Eyre*, the Court of King's Bench held, that a solicitor who advanced his own money on the purchase of an annuity, was not entitled to any commission fee. That was an application made to set an annuity aside, on the ground that the consideration had been improperly memorialized, in as much as there had been a deduction of 3*l.* for a commission fee, charged by the solicitor, which was not expressed in the memorial. The Counsel who opposed the rule, insisted that a commission fee was expressly allowed to the person procuring the loan, by the Annuity Act; but the *Court* were of opinion, that the solicitor was not entitled to any commission

see

fee on
that (a
rule ab

In *what*
cur
by

T

procu
than i
tends
for pe
apply
purpo
such a
cuniar

fee on putting out his own money; and for that (amongst other objections) made the rule absolute.

Ch. IV. f. 3.

SECT. III.

In what Cases the Solicitors', &c. Fees for procuring Money for Annuities, are not limited by the Act.

THE seventh section (a) of the Annuity (a) Ante 287.

Act, which prohibits persons who procure money for annuities, taking more than 10s. for every 100*l.* actually paid, extends to such annuities only as are granted for pecuniary considerations, and does not apply to *voluntary* annuities, which, for the purposes of the Act, have been held to be such as are granted for any other than a pecuniary consideration.

That

Ch. IV. f. 3.

*Crespigny v.
Wittenoom, &
al.* 4 Term Rep.
790.

That appears from the case of *Crespigny* against *Wittenoom* and another, which was an annuity granted in consideration of the grantee's giving up a lucrative business to the grantor, where the Court of King's Bench held, that it was not such an annuity as it was necessary to register; and Mr. J. Buller, in delivering his opinion, said, "That it was impossible to suppose that the Legislature intended to prohibit a broker receiving any premium for his trouble in negotiating such an annuity as that, and yet that his premium could not be estimated according to the dimensions of that clause in the Act, which limits the fees to be taken by persons procuring money for annuities."

BY a
tained f
charge
ment,
nor to
upon la
whereo
or in fe
grant, c
stock i
dends v
value t
luntary
pecuni
or ren
rate, o
by act
where

CHAP. V.

Certain Cases to which the Annuity Act does not extend.

BY 17 Geo. 3, c. 26, s. 8, it is further enacted, "That nothing in this act contained shall extend to any annuity or rent-charge given by will or by marriage settlement, or for the advancement of a child, nor to any annuity or rent-charge secured upon lands of equal or greater annual value, whereof the grantor was seized in fee-simple or in fee-tail in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity, nor to any voluntary annuity, granted without regard to pecuniary consideration; nor to any annuity or rent-charge granted by any body corporate, or under any authority or trust created by act of parliament; nor to any annuity, where the sum to be paid does not exceed

ten

Ch. V. f. 1.

ten pounds annually, unless there be more than one such last mentioned annuity from the same grantor or grantors, to or in trust for the same person or persons."

SECT. I.

Concerning the Estate to which the Annuity Act extends.

17 G. 3, c. 26, f. 8, ante 301.

NOTHING in this act shall extend to any annuity or rent-charge, &c. secured upon lands of equal or greater annual value, whereof the grantor was seized in fee or in tail in possession, &c.] This exception is held to extend to an equitable, as well as a legal estate: accordingly, where a tenant in fee of the equity of redemption of his estates, who had conveyed them in trust to pay off the mortgage, and all debts charged upon or being a lien upon them, granted an annuity, secured upon them, a bond, and judgment

to in
ment,
ment
trust d
the sec
rolled
but the
in equ
to the
it bein
legal
ought

Ano
than th
tion, n
them
below
is secu
is with
are mo

T
Vernon
dentur
1778,
of his
of Bu

to which the Annuity Act extends.

303

ment, and the grantee brought in the judgment debt as a claim provided for by the trust deed, which was rejected, on account of the securities for the annuity not being enrolled according to the directions of the act, but the Court of Chancery held, that an estate in equity, in fee simple, or in fee tail, was, as to the necessity of an annuity secured upon it being registered, the same, as if it was a legal estate, and therefore that the claim ought to have been admitted.

And if the lands are of greater annual value than the annuity, they are within this exception, notwithstanding there are charges upon them which reduce the grantor's income below the annuity. So that if an annuity is secured on lands in fee of equal value, it is within the exception, though the lands are mortgaged for their full value.

Thus in the case of *Sbrapnel* against *Vernon*, where *Francis Duffield*, Esq; by indenture of the 9th and 10th of January 1778, conveyed the equity of redemption of his estates at *Medmenham*, in the county of *Bucks*, then in mortgage to *Jeremiah Crutcheley*

Sbrapnel v.
Vernon, 2 Bro.
Ch. Ca. 208.

Ch. V. c. 1.

Concerning the Estate

Crutbley for a term of years, whereof he was seized in fee, to *John Morton*, Esq; in trust to sell the same and to pay off the mortgage, and a charge of 1000*l.* due to himself; and after payment of the same, to pay such debts as then were, or should at the time of the sale, be a charge or lien upon such estates; and after payment thereof, to apply the residue of the money to such persons as *Duffield* should appoint. On the 27th of *January* 1778, *Duffield*, in consideration of 700*l.* paid by *Coles*, granted to him an annuity of 100*l.* for his and his wife's life, which was also secured by a bond, upon which judgment was entered upon the 31st of *January* following. The cause having been heard, and a reference to the Master to take an account of the debts, *Coles* brought in a claim before the Master for his original sum of 700*l.* as a debt provided for by the trust deed; the Master refused the claim, because it appeared that the bond and indenture were not duly enrolled according to the directions of the Annuity Act; but by his report found the deed executed to *Morton*, and that *Morton* was for two or three years before the execution thereof, in receipt of the rents and

and profits of the estates, as agent to *Duffield*, and continued in receipt thereof, and the tenants continued to pay their rents to him without any particular attornment, and that *Coles*, or his agent, had no notice of this execution of such deed, but had reason to believe that *Duffield* was seised thereof in fee simple. *Coles* excepted to the Master's report, and insisted under the circumstance found thereby, that in a Court of Equity he was within the exceptions of the last section of the Annuity Act (a), as he was a creditor within the deed of trust, and that the deed ought to be considered as an appointment to answer the said annuity; and therefore the Master ought to have admitted his claim.

(a) Ante 301.

The Counsel in support of the exception argued, that *Duffield* conveyed the estates to *Morton*, in trust to sell and pay such debts as then were or should be a lien upon the estates; the judgment debt and the annuity grant came within that description. The exception in the act of parliament, that obviates the necessity of enrolling the conveyance, is where the grantor is seised in fee-

X

simple,

simple, or fee-tail; but it it was objected, that here *Duffield* was neither, he having conveyed the estate to *Morton*. Upon this arises the question, whether *Coles* is not within the exception. The conveyance only being to discharge incumbrances, *Duffield* was seised of the equity of redemption. The intent of the act was to prevent tenants for life from granting annuities, not to prevent persons who had equitable interests. The words in the act could not be meant to be restrained to legal seisin only. The Court has in many cases extended the meaning of the word seisin to equitable interests; and possession has been held to be within the scope of the act, as in the statute of uses, where persons are said to be seised of an use; but it was held at law that they were only possessed of it; but in this case, the *cestui que use* was always considered as being seised. The words of the exception, literally taken, will extend to an equitable title. A person equitably seised for life, or for a less estate, would be within the restraint of the act, therefore a person equitably seised in fee-simple or in tail, must be within the exception. Here is a resulting trust for *Duffield*,
and

and his heirs, in fee. The most general statutes are extended by this Court to equitable purposes. Though at common law a feme covert can make no will, in this Court she may make what is tantamount to it. Then, under another head of equity, there was a deception on *Coles*. Any person dealing with *Duffield* must have supposed him to be seised of the estate in fee; *Morton* had been the receiver; there was nothing to shew that there had been a change of ownership; it is stated there was no attornment of the tenants, and it was held out by the agents of *Duffield*, that he was seised of the estate in fee-simple; and if this deception had not been made use of, *Coles* would certainly not have left it unregistered. The annuity is at present out of the case. He claims only as a creditor by bond and judgment; and the deed of trust operates as an appointment of the residue, which requires no registration. If not so, the deed is void under the statute of *Eliz.* as fraudulent against creditors, and then the whole being void, *Coles* may recover his principal money as a creditor, by bond and judgment.

The Counsel in support of the Master's report argued thus:—The question has been treated as if there was a distinction in the act, between an annuity for the life of the grantor, and an annuity for the life of the grantee; but the act draws no such distinction: the annuity is therefore void, unless it is within the exception in the act. To be so, it must be charged on lands of equal or greater value, whereof the grantor is seised either in fee or in tail in possession. It is material under the act, that the seisin shall be of an estate in possession, one of the views of the act being to prevent the grants of annuities out of reversions. Then, was *Duffield* seised either in fee, or in tail in possession, of any thing? He was not seised at all; he had only a contingent reversion. If *Coles* had brought an action, and the statute had been pleaded, he would not have replied, that *Duffield* was seised either in fee or in tail. It is only where the grantor can command a rent equal or greater than the annuity, that the statute meant, that the annuity should not be registered. The next objection is, that *Morton* had been in receipt of the rents, as agent, and that the tenants

did

did not attain; but when he received the rents, he would receive them under the respective titles he had at the time, and of course after the conveyance under the title he had thereby acquired. With respect to the value of the estate, that must be meant of a value above reprises. The act intended to guard against persons who are in extreme imbecility, from granting annuities, and therefore it must have been intended that land of equal or greater value, should be lands above reprises. But it is further objected in this case, that there was fraud in the representation of *Duffield's* situation. To which it may be answered, that it is not necessary, under the act of parliament, that the annuitant who is to enrol, should have notice given of the situation of the estate. The exception in the act must be taken strictly, and therefore he must take upon himself the hazard as to the grantor's estate.

Lord *Thurlow* Chancellor, said,—I am of opinion that the Master was wrong in not admitting the claim. I think an estate in equity, in fee-simple, or in fee-tail, is

in this respect the same, as if it was a legal estate. In many acts of parliament an equitable estate is considered the same as if it were a legal estate, the words *seised in law or equity*, in the qualification act, shew that the word *seised* is applicable to both. I do not fully comprehend the act, as I do not see why the annuity should not be registered as well in the case of a man having a fee-simple or fee-tail, as where he has a less estate. But the act certainly does not say that it shall be a value above reprises; therefore if there be an estate in fee or tail, though mortgaged for its whole value, it is within the exception of the act. Then it is said that *Morton* was in receipt of the rents, as agent to the owner, and the exception also states the other quality in which he stood, that, under the deed, he took it to pay off the first mortgage, then to pay a debt to himself, then the third use was to pay such debts as were liens on the estate. Beyond that, the use was to the mortgagor, (for I consider the whole as three mortgages) not to pay debts generally. I cannot distinguish this from the common case of a mortgage, where the mortgagor continues

seised

seised
he g
is wh
ing s
less I
Exce

What
traa
AEE

THE

annual
unless
tions
and ho
ed, sec
dealing
ty with
been g
transac

Ch. V. f. 2.

seised in equity, subject to the charge, and he grants an annuity. The only question is whether the word *seisin* will extend to being seised of an estate in equity, which, unless I am mistaken in point of law, it will. Exception allowed.

SECT. II.

*What Grants, Regrants, Assignments, or Con-
tracts for Annuities are within the Annuity
Act.*

THE annuity act is meant as a regulation for registering the grant of every annual sum payable for the life of any person, unless it falls within some one of the exceptions introduced in the eighth section (a); and however such annual sum may be granted, secured, or paid, if it appears from the dealings between the parties, that an annuity within the description of that act, has been granted, bought, or sold, although the transaction may in every respect have been fair

(a) Ante 301.

and honourable, yet the securities will certainly be vacated, unless the solemnities required by that act have been complied with in every particular. What is, and what is not such a grant as the act did not intend to comprise, depends entirely upon the peculiar circumstances of each case; and every grant, though by the same grantor, and payable out of the same fund, if they are granted to different persons at the same time, or to the same person, if at different times, unless intended as one annuity only, must be separately memorialized, and cannot be stated as the grant of one annuity, although the whole money to be granted be payable to a trustee to pay over the two annuities to the respective grantees. Accordingly where two annuities of 50*l.* each were payable to two persons, and granted out of the interest of certain funds, which were assigned to a trustee expressly for that purpose, and there was but one memorial stating the transaction to be the grant of one annuity of the whole money assigned and payable only to the trustee, the Court of Chancery held the securities void by the annuity act, because there was not a memorial of the actual annuities. And they said, that the trans-

and transacted the act depends, as an the pu
 Tl against a deed life int the m covenan produ specific of deat made i that th lute an case w titled u three p 5*l.* old per cer tereft fiderati *Gildet*, the an

transaction could not be said not to be within the act, as being the purchase of such dividends, in as much as the parties had treated it as an annuity by the mode of negotiating the purchase.

Ch. V. f. 2.

That was the case of *Hood* and others against *Burlton* and others, where there was a deed reciting an agreement for a sale of a life interest in stock, and it appeared from the memorial registered, that there was a covenant to pay any deficiency beyond the produce to the extent of the annual sum specified, and a proportionable share in case of death between the days of payment, which made it quite clear to the Court of Chancery, that the parties intended to grant two absolute annuities. The principal facts of the case were as follows: Mrs. *Burlton* was entitled under her marriage settlement of 2650*l.* three per cent. consol. annuities, 1387*l.* 5*s.* 5*d.* old south sea annuities, and 750*l.* three per cent. consol. bank annuities, and the interest and Dividends thereof, and in consideration of 400*l.* advanced by *Richard Gildet*, and 400*l.* by *Edmund Hood*, had sold the annual sum of 50*l.* to each, part of the

said

Hood v. Burl-
ton, 2 Vez. Jun.
20, 4 Bro. Ch.
Ca. 121, S. C.

said dividends, for her life, and for securing the annuities, had assigned the yearly interest of the said sums in the several funds to *John Hood*; and there was a bond and warrant of attorney also entered into in case the dividends assigned should prove insufficient; it was declared also by an indenture dated the 5th of *April* 1786, by all the parties, that *John Hood* stood possessed of the annual sum of 100*l.* in trust as to the sum of 50*l.* to pay the same to *Edmund Hood*, and as to 50*l.* to pay the same to and for the separate use of *Lucy Gildet*, during the joint lives of *Richard Gildet*, *Lucy* his wife, and *Mrs. Burlton*, and in case of the death of *Lucy* first, then to her husband; and it was also covenanted that an application should be made to the Court of Chancery for an order to the Accountant-General, in whose name the funds had been transferred, to pay to, or authorize *John Hood* to receive the interest and dividends of the funds upon which the annuities were secured. Upon a bill filed, stating that the annuities were in arrear, and praying the trusts of the deed of the 5th of *April* 1786 might be established, and that the principal sum of money in the funds, and the interest and dividends thereof

and thereof
 accordingly
 thereof,
 sale of
 perly r
 transact
 by Mr
 pay 500
 trust to
Hood,
 conten
 annuity
 merely
ton's in
 register

L
 very h
 cannot
 upon
 require
 action
 of the
 strictio
 to by
 fairly,
 jects

thereof might be transferred to, and applied according to the said deed, and the trusts thereof, it was objected that this was the sale of an annuity, and that it was not properly registered, the memorial stated the transactions to be *one annuity* of 100*l.* granted by Mrs. *Burton* to *John Hood*, in trust to pay 50*l.* part thereof to *Lucy Gildet*, and in trust to pay 50*l.* other part thereof to *Edmund Hood*, &c.; the Counsel for the plaintiffs contended that this was not the grant of an annuity within the meaning of the act, but merely an assignment of part of Mrs. *Burton's* interest, which it was not necessary to register at all.

Lord Commissioner *Eyre*.—It will be very hard upon the plaintiff, if this claim cannot be supported; if not, it must be upon considerations of public policy; which requires, that however fair this kind of transaction may be, yet for the general security of the public, it must be under severe restrictions, which must be strictly conformed to by all, as well people, who mean to act fairly, as those, who are the immediate objects of the act. I was inclined, thinking this

this a fair transaction, to bring it to the case of a purchase of these dividends; and one observation puts it out of doubt; they were to have beyond these dividends so much paid as would make up the deficiency; and it was not foreseen, that it would happen that the *cestui que vie* would be alive upon the day the dividends would be due; and an express provision is made for that case. Therefore it is clear, that upon the whole context of the instruments taken together, it was intended to be an absolute annuity of 5*l.* to each. One objection was made, which I was inclined to think might also avail the plaintiff; namely, that no annuity was granted; but upon consideration I am not satisfied, that that will serve him. It is manifestly the object of the act to comprehend all manner of instruments calculated to secure the payment of an annuity. Though the language is, “whereby an annuity shall be granted,” yet the construction ought to be, whereby it shall in any manner be secured to be paid; and therefore if the Court thinks this an instrument, whereby an annuity is secured to be paid, however it has been granted, all those instruments must be within

and
within
am of
this a
there
terms
which
arise
moria
it doe
I conf
object
ments
Hood;
him, o
nities
confide
and h
eviden
differ
person,
but wh
secure
see. T
two an
and the

within the act, or there is an end of it. I am of opinion, that I am obliged to hold this an annuity within the act; and that there must be a regular memorial, in the terms of the act, of all the instruments by which it is secured. Then two objections arise to this memorial; that it is not a memorial of the real annuity granted; and that it does not express for whom it is granted: I confess I cannot get over the first of these objections; for when we look at the instruments there is no annuity of 100*l.* to *John Hood*; but all the dividends are granted to him, out of them to pay two different annuities to two different persons for different considerations by them respectively paid; and how to say, an annual sum appearing evidently to be intended to be paid to two different parties is one annuity granted to a person, to whom in truth it is not granted, but who is only trustee of the whole fund to secure the distributive payments, I cannot see. Then there is no memorial of these two annuities, and therefore they are void, and the bill must be dismissed

Lord

Lord Commissioner *Alsbury*.—I am sorry to be obliged to declare that I am of the same opinion; and should have been glad to have supported this bill, because I agree, that this is a fair and honourable transaction: but in cases like this coming within an act meant to guard against fraud, people, who mean well, will sometimes be entangled in some want of formality. As to this being an annuity, and not a sale, nothing is more clear. The parties treated about an annuity. Suppose one man to come to another, saying, he wants to buy an annuity, and that they speak about it, how it is to be secured, by certain dividends in the funds; that is a contract for an annuity. How is it to be executed but as this is, by assigning those dividends to a trustee? This act was meant chiefly to protect people having annual life interests, as being most likely to get into bad hands; and therefore, though in the present instance the plaintiff has treated fairly, he must be bound by those rules meant to guard honest people against fraud. This is certainly within the act, which should be literally and strictly pursued, therefore I think

an
think
the a
S
was
tain
grant
dends
the an
that
ought
that it
eight
in the
actual
althou
names
in that
where
made
nuity.

TH
son ag
ron ag
an ann

think this is not a good memorial within the act. Bill dismissed.

Ch. V. f. 2.

So in another case, where a person who was entitled for life to the dividends in certain stock, standing in the names of trustees, granted an annuity payable out of the dividends, and empowered those trustees to pay the annuity, the Court of King's Bench held that was the grant of such an annuity as ought to be registered under the act, for that it was not within the exception of the eighth (a) section, because the power vested in the trustees was not equivalent to the actual transfer of the stock to those trustees, although it was actually vested in their names; and they held also that the exception in that clause only extended to those cases where an actual transfer of the stock was made for the purpose of securing the annuity.

(a) Ante 307.

That point appears in the case of *Hudson v. Skinner*, in December 1789, *Came-ron* agreed with *Hudson* for the purchase of an annuity of 20*l.* secured to him (*Hudson*) by

Hudson v. Skinner, 6 Term Rep. 596.

by *Skinner*, by deed dated 2d November 1789, out of the interest and dividends of 200*l.* 3 per cents, and 200*l.* 4 per cents, vested in the names of *Van Mildart* and *Hopkins*, trustees under the will of *C. Christie*, deceased, to the dividends of which *Skinner* was entitled for life, under *Christie's* will. The above annuity to *Hudson* was assigned to *Cameron*, by a deed poll, indorsed upon the grant of the said annuity on the 26th of December 1789, in consideration of 160*l.* paid by *Cameron*. The annuity had been set aside by the Court of B. R. on the application of *Skinner*, who made an affidavit that no part of the consideration for the original annuity had been paid to him, and now a rule was granted, calling on *Skinner* to shew cause why so much of the former rule as relates to the annuity of 20*l.* granted by *Skinner* to *Hudson*, and assigned by the latter to *Cameron*, should not be discharged, on an affidavit that *Cameron* was no party to the above rule, and that the Court were not informed when the former rule was made, that the annuity was secured by the stock.

The

and assignments are within the act.

321

Ch. V. l. 2.

The Counsel in support of the present rule said, that this case was within the exception in the annuity act, which enacted, that the act shall not extend to any "annuity secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity;" observing, that the power of attorney to the trustees to pay the dividends to *Cameron*, was equivalent to a transfer of the stock to trustees, it being actually vested in their names

On the other side it was insisted, that it was not competent to *Cameron* to open the former rule; and 2ndly, even if *Cameron* could now make any objection to the former rule, that this case did not come within the words of the exception in the act; there not having been "*an actual transfer of the stock*" on the assignment of the annuity. And *The Court* being of opinion against *Cameron*, the assignee of the annuity, on both points, they discharged this rule.

Y

So

So every assignment of any part of an annuity already granted and enrolled, must be registered according to the solemnities prescribed by the act, each assignment being, in that respect, considered as a fresh grant; accordingly, where there was an application to the Court of Chancery, respecting the validity of several such assignments, that Court decreed them to be void, because they were not properly registered.

Duke of Bolton
v. Williams, 4
Bro. Ch. Ca.
297, 2 Vez. Jun.
138, S. C.

That was the case of the Duke of Bolton against *Williams*, where an estate was charged with the payment of an annuity of 300*l.* for the separate use of Mrs. *Williams*, who had assigned parts of it to *Creswell* and *Sampson*; and upon a bill filed in the Court of Chancery, by the present Duke of Bolton, to know to whom the arrears of the annuity granted by the late Duke, were to be paid, as they had been withheld on account of a dispute amongst the representatives of the assignees, and Mrs. *Williams*, objections were taken to the assignments, on account of their not being properly

an
perly
that
an ex
terial
nuity
to fre
to ex

T
Lord
upon
ship d
the re
were
proper
hearin
Lough
cree (a
by an
lives?

So
ed befo
before
it, if fu
rial of t

perly registered; when the Counsel argued that they were the assignments of parts of an existing annuity, and were therefore materially different from the grant of an annuity; that the act of parliament only applied to fresh annuities, and never had been held to extend to assignments.

The cause came first to be heard before Lord *Thurlow*, who expressed great doubt upon the point, but in *May* 1792, his Lordship declared that the deeds under which the representatives of the assignees claimed were void for the want of the enrolment of proper memorials thereof, and upon a rehearing of the cause in *June* 1793, Lord *Loughborough*, Chancellor, affirmed that decree (a); saying,—Is it not a deed where-
by an annuity is granted for one or more lives?

(a) See the decree at length ante 90.

So the assignment of any annuity granted before the act passed, must be registered before the assignee can take any step upon it, if such assignment exists when the memorial of the original securities is enrolled.

Grant v. Foley,
Tr. 23 Geo. 3.
C. B. MSS.
See this case at length ante 38.

Y 2

But

Ch. V. c. 2.

Bromley v.
Greathead,
Hil. Term, 34
Geo. 3. MSS.
See the case at
length ante 45.

But the assignee of an annuity which was properly enrolled when it was first granted, need not enrol afresh for the sake of inserting his annuity in the memorial, before he proceeds against the grantor, as the act is fully complied with by registering a memorial of the original securities.

Dixon v. Birch
& al. 2 H. Bl.
307.

The same point has since been determined in the Court of Common Pleas in the case of *Dixon v. Birch* and *Tyte*, where a rule was granted to shew cause why an indenture, bond, and warrant of attorney entered into to secure an annuity should not be given up to be cancelled, and the money levied under an execution staid in the hands of the sheriff. The facts were simply these; *Birch* granted the annuity to *Dixon*, *Tyte* joining as a security, *Dixon* assigned the whole of it to *Cousins*, and the execution issued in the name of *Dixon*: there was a memorial of the original indenture, bond, and warrant, but none of the assignment from *Dixon* to *Cousins*, on the omission of which, the application to the Court was founded. But after argument, the Court held, that as there was a memorial of the original securities enrolled, the object of

and
of the
of the
that i
ment.

W
larly
virtue
pose;
to the
the de
the at
at any
borrov
deeds
upon 2
the att
having
suppos
nuity 1
rial of
Court
saying
new tr
ed acc
TH
where

and Assignments are within the Act.

325

of the annuity act, which was the protection of the grantor, was fully complied with, and that it was not necessary to enrol the assignment. Rule discharged.

Ch. V. f. 2.

Where an annuity was granted and regularly registered, but had been redeemed by virtue of a clause in the deeds, for that purpose, when the deeds were delivered up to the grantor uncanceled; and at the time the deeds were delivered up, the grantor and the attorney for the grantee agreed, that if at any future time the grantor should wish to borrow money on the same terms, those same deeds should be given as a security; and upon a subsequent application by the grantor, the attorney advanced the same money on having the same deeds delivered to him, but, supposing the memorial of the original annuity sufficient, he did not enrol any memorial of the regrant, on which account the Court of King's Bench set aside the annuity, saying, that the latter grant, being perfectly a new transaction, ought to have been registered according to the act.

That was the case of *Hammond v. Foster*,
where in *December* 1789, the defendant
Y 3 granted

*Hammond v.
Foster*, E. 34,
Geo. 3. MSS.
§ Trin. Rep.
634, S. C.

granted to the plaintiff an annuity of 50*l.* in consideration of 325*l.* In *May* following the defendant paid off the principal, together with the arrears, and the further sum of 25*l.* there being a clause in the deed allowing a redemption upon payment of these sums, and received back from Mr. *Willey*, the plaintiff's attorney, the annuity deeds uncanceled. In *July* following the defendant, having occasion to borrow another sum of money, applied to *Willey* to procure it, who informed him that he had not returned to his client the money he had received for redeeming the annuity, and that he would re-deliver to him (the defendant) that sum on receiving back the deeds which he had before delivered up. The defendant assented to this proposal, and received, on delivering back the deeds, *Willey's* notes for the amount of the money agreed upon, which notes the defendant was obliged to discount. There was a memorial of the first transaction, but not of the second.

The Counsel for the plaintiff insisted, first, that as the second was a perfectly new transaction, and distinct from the former

one

and
one, t
the d
son,
the r
it was
regist
of th

B
a mer
annui
for th
annui
revive
both
lute.

A
of an
partly
respec
transa
clude
that a
enroll
forma

one, there should have been new stamps to the deeds: secondly, that for the same reason, there should have been a memorial of the regrant of the annuity. On the other side it was contended, that it was not necessary to register the regrant, because by the agreement of the parties every thing was waved.

But Lord Kenyon Ch. J. said, This is not a mere irregularity; but the regrant of the annuity was substantially a new transaction; for the deeds were *functio officio* after the first annuity was paid off, and that they could not revive again by the regrant, therefore on both grounds the rule must be made absolute.

A contract to give security for the grant of an annuity, although such contract be partly executed, is not looked upon in this respect as equal to the grant of it, or such a transaction as the Legislature meant to include in the act; therefore it is not necessary that a memorial of such contract should be enrolled, in order to compel a specific performance of it.

Thus where it was agreed, that an annuity, secured upon good and sufficient landed property, should be granted in consideration of the conveyance of a real estate, and the conveyances were prepared, but not executed before the death of the grantee, although one payment of the annuity had become due according to the agreement, and had been tendered, yet upon a bill filed, the Court of Chancery compelled a specific performance of the contract, and said that as it was only a covenant to make a future grant, it was not within the act.

*Jackson v.
Lever et al.
3 Bro. Ch. Ca.
605.*

That was the case of *Jackson* against *Lever* and others, where the bill stated that Sir *Ashton Lever*, Knt. deceased, being seised in fee, of considerable estates in *Lancashire*, subject to a mortgage of 10,000*l.* and other incumbrances, caused several parts thereof to be advertised for sale by public auction, in order to discharge such incumbrances; and several parts thereof were sold to various persons, some for money considerations, and others in consideration of annuities to be granted by the respective purchasers to the said Sir *Ashton Lever* for his life.

and
life.
chaser
ton, the
the wi
annuity
entered
whereb
fee-sim
therein
and aff
and his
quarte
to be
next.
lease,
chaelm
that in
die bes
contra
ton's h
mises.
that fo
said p
trustee
or att
that as
procu

life. That the plaintiff became the purchaser of certain messuages lying in *Myddleton*, then in the possession of himself, and of the widow *Bamford*, in consideration of an annuity of 280*l.* a year; and a contract was entered into, bearing date *July* 27th 1787, whereby *Sir Ashton* agreed to convey the fee-simple and inheritance of the premises therein described, to the plaintiff, his heirs and assigns; he and they paying to *Sir Ashton* and his assigns an annuity of 280*l.* payable quarterly at the usual days, the first payment to be made on the 25th of *December* then next. The premises were sold subject to a lease, *Sir Ashton* to have the rents till *Michaelmas* then next. And it was provided, that in case *Sir Ashton Lever* should happen to die before the 29th of *September* then next, the contract should be absolutely void, and *Sir Ashton's* heirs not bound to convey the premises. And the plaintiff further agreed, that for securing the said sum of 280*l.* the said premises should be conveyed to such trustee, and in such manner, as the counsel or attorney of *Sir Ashton* should advise; and, that as a further security, the plaintiff would procure and give good and sufficient landed security,

security, to the satisfaction of Sir *Ashton's* Counsel, for the payment of the said annuity of 28*ol.* to the said Sir *Ashton*; in which securities all such powers and remedies should be comprised for recovery by Sir *Ashton Lever*, as his Counsel should advise.

A short time after entering into the contract, plaintiff delivered to the defendant *Milne*, who was the agent of Sir *Ashton Lever*, the title deeds, and other particulars of certain estates of the plaintiff's, which, together with the purchased premises, were intended to be made a security for the annuity of 28*ol.* and *Milne* having examined into the title, &c. of the said estates, declared himself satisfied with the security, and promised to prepare the conveyances for carrying the contract into execution. Sir *Ashton Lever* survived the 29th of *September* ensuing the date of the contract, but in consequence of some delays, *Milne* did not prepare the conveyances before the 25th of *December* 1787. On or about the 29th of the same month, plaintiff waited on *Milne*, and offered to pay him on the behalf of Sir *Ashton Lever*, the quarter's annuity which had then become due,

due, but he declined receiving it, saying that the conveyances would be very soon completed, and that he would not receive any money from any of the annuity purchasers until the conveyances were ready.

Milne afterwards prepared the conveyances, and sent them to *London* to be settled by Counsel, from whence he received them on the evening of the 1st of *February* 1788, but on that day *Sir Ashton Lever* died suddenly, so that none of the conveyances were, or could be executed by him. *Sir Ashton* left the defendant *John Lever* heir at law, the bill therefore prayed a specific performance of the contract, and that proper parties might be decreed to join in conveyances of the premises to the plaintiff.

The Counsel for the defendants argued, that this contract ought to have been registered, as not being within the exception in the act, which was, "that nothing in the act shall extend to an annuity secured on lands of equal or greater annual value, whereof the grantor shall be seised in fee-simple or fee-tail, in possession at the time of the grant."

grant." That here the plaintiff appears manifestly not to be seised of the land, the contract being that he shall "procure and give," so that it might be land to be purchased or borrowed to make the security, the words also are "good and sufficient landed security," that those words were not sufficiently certain, because "sufficient landed security" might be any of which Sir *Ashton Lever's* agents might approve; it might be a leasehold for a long term of years, which would not be within the exception in the act, and yet might be a sufficient security for an annuity for Sir *Ashton Lever's* life. That there was no instrument in this case that they could look to but the contract, and if that was defective, by the policy of the act, it is void. And that if it was not within the exception, it certainly was within the act, for that it was an engagement equivalent to a grant of an annuity, and though only an equitable grant, that it was void for want of a memorial being enrolled, as it was such a contract that an action would lie upon it for the annuity.

Lord *Thurlow*, Chancellor, said,—There were two questions, first, Was this in form, a grant

and

a grant
make
it was
not se
the co
object
execu
where
suppo
ment
life, h
confid
to dec

T

of *M*
where
27th
deceas
ried sp
the fan
directi
count
nuity
purch

a grant of an annuity, or only a covenant to make such future grant; secondly, Whether it was within the act. As to the *rest*, I do not see if an annuity was contracted for, why the consideration should not be paid. It is objected, the contract cannot be carried into execution *modo et formâ*; that has great weight where there has been no payment. But, suppose a suit had been commenced for payment of the annuity, would a death *pendente lite*, have made any difference? I have not considered the cases on this point sufficiently to decide this.

The cause stood over, and upon the 24th of May, Lord Chancellor made his decree, whereby he declared that the contract, dated 27th July 1787, between Sir *Alston Lever*, deceased, and the plaintiff, ought to be carried specifically into execution; and decreed the same accordingly, and gave the necessary directions for that purpose; and, for an account and payment of the arrears of the annuity of 28*ol.* the consideration for the purchase of the estate.

SECT. III.

What are such Grants of Annuities as need not be registered, and what are considered to be voluntary Annuities within this Act.

17 G. 3, c. 26, s. 3, ante 301.

NOTHING in this Act contained shall extend to any voluntary annuity granted without regard to any pecuniary consideration, &c.] The Annuity Act is held to apply to such annuities only as are granted in consideration of something actually paid; and the meaning of this part of the excepting clause is, that any annuity granted for any other than a pecuniary consideration, shall, for purposes of the act, be considered to be a voluntary annuity, and consequently within the exceptions there introduced.

Upon this ground the Court of King's Bench decided, that an annuity granted in consideration of the grantee's giving up a lucrative business in favour of the grantor, was not such an annuity as it was necessary to

an
to reg
of it.

Th
Witten
of cov
the pla
Witten
Crespig
in Jun
cited c
in Aug
defend
agreed
(as pr
name c
Crespig
procto
carried
ants, i
that Cr
partne
which
had be
the pla
the bu
the pla

to register in order to compel the payment of it.

Ch. V. f. 3.

That was the case of *Crespigny* against *Wittenoom* and another, which was an action of covenant on articles of agreement between the plaintiff of the first part, the defendant, *Wittenoom*, of the second, and the defendant, *Crespigny* the younger, of the third part, dated in June 1786. By those articles (which recited certain articles of copartnership, dated in August 1786, between the plaintiff and the defendant *Wittenoom*), by which it was agreed that the business of the copartnership (as proctors) should be carried on in the name of *Wittenoom* only, until the defendant, *Crespigny* the younger, should be admitted a proctor; after which the same should be carried on in the names of the two defendants, it being intended and thereby agreed that *Crespigny* the younger should become a partner in equal degree with *Wittenoom*; and which also recited that *Crespigny* the younger had been lately admitted a proctor, and that the plaintiff was desirous to quit and give up the business, upon the defendant's paying the plaintiff the clear annual sum of 400*l*.

It

Crespigny v.
Wittenoom, &
al. 4 Term Rep.
790.

Ch. V. f. 3.

It was covenanted and agreed, that in consideration of the plaintiff's giving up the business to the defendants, they would pay him the clear annual sum of 400*l.* during his life, by quarterly payments, and also the further sum of 37*l.* 10*s.* every three months during the joint lives of the plaintiff and *Mary Green*, widow of *J. Green*, who was a late partner with the plaintiff.

The declaration, after stating the above, assigned a breach in the non-payment. The defendants pleaded that the articles of agreement were made and executed after the passing of the Annuity Act, and that no memorial of those articles was enrolled within the time the Annuity Act prescribed, and that therefore the articles were null and void. To this plea there was a general demurrer, and joinder.

It was argued by the Counsel for the demurrer, that this case came within the exception in the last clause (*a*) of the Annuity Act, which provides against the extension of the act to any "voluntary annuity granted without regard to pecuniary consideration."

This,

(*a*) Ante 301.

This, indeed, was not a *voluntary* annuity, according to the most extensive signification of the term; but the words which follow, namely, "without regard to pecuniary consideration," shew the sense in which the word *voluntary* was intended to be used. And here no pecuniary consideration was given, the consideration being the relinquishment by the plaintiff of a lucrative business in favour of the defendants. That this is the true construction of the act, is apparent from the general scope and intention of it, which was to guard against the improvident acts of infants or necessitous persons, who were driven to make hard bargains, for the sake of a present supply of money.

The Court said they were inclined to hear the objections to this memorial; upon which the Counsel argued, that the object of the Annuity Act was not so confined as had been represented. That it was a general regulation for registering "the grants of life-annuities," and that the preamble could not control the enacting part of the act. Now the first section in terms extends to the grant of any annuity; and therefore this case must be in-

Z

cluded

cluded therein, unless it falls within any of the subsequent exceptions. Neither can it be urged that the object of the act was only to secure the registering of annuities for pecuniary considerations, or, in the terms of the third clause, where the consideration was "in money only;" for there are many exceptions introduced into the act, which would be altogether nugatory, if that were the intention of the Legislature; amongst others, that in the fourth clause, for avoiding any annuity, where any part of the consideration shall be in goods, or annuities given by will or marriage-settlement, or for the advancement of a child," mentioned in the last clause, where there is no pecuniary consideration paid. Then, if the construction of the act be not confined to annuities where money only is paid, it must extend to all cases not particularly excepted; and this is not one of the exceptions; for the word *voluntary* must be taken as contradistinguished from *consideration*. If that be not so, and the construction on the other side be adopted, the word will be perfectly nugatory; for then, whether it be *voluntary*, or for a valuable consideration, it will make no difference, provided

vid
Th
wo
mit
of t
was
duler
fom
othe
from
of th
tend
an a
states
small
fons;
by th
hum
the ac
barga
that th
The n
part o
and th
Court

vided the consideration be not *pecuniary*. This would be to reject a sensible operative word from the act, which cannot be permitted, and would be letting in great part of those very mischiefs against which the act was principally intended to guard; for fraudulent annuities may still be granted upon some supposed services or considerations other than money.

Ch. V. f. 3.

Lord *Kenyon* Ch. J.—It is apparent from the preamble and the different clauses of the act, that the Legislature did not intend that there should be any memorial of an annuity like the present. The preamble states the mischiefs of granting annuities for small considerations by improvident persons; and those mischiefs are guarded against by the several clauses in the act, as far as human prudence can go. It is evident that the act was intended as a check against hard bargains. The third clause expressly says, that the consideration shall be in *money only*. The next section, indeed, says, that if any part of the consideration be paid in *notes*, and those notes be not afterwards paid, the Court may order the deeds securing the annuity

nuity to be cancelled. The Court therefore were bound by the positive words of the act to declare that annuities, the consideration of which was paid in notes, must be registered pursuant to the act. But in both these cases the annuity is granted in consideration of *something paid* to the grantor; and no decision has extended the provisions in the first clause beyond these two cases. Here either the annuity was absolutely void, because not granted for either of the considerations mentioned in the third and fourth sections, and then no registry of it could make it good; or it was such an annuity as could not be registered according to the act. But it is too much to say that the annuity is void in itself, and I think that neither the spirit or the words of the act require that it should be registered. As to the argument, *exceptio probat regulam*, it seems to me that the anxiety of some members of the House induced them to insert the last clause, after the act was first drawn; but I think that the first section could never have been extended to the cases mentioned in the last, if they had not been excepted.

Buller

as need not be registered, &c.

341

Buller J.—I agree that the preamble cannot control the enacting part of a statute, which is expressed in clear and unambiguous terms. But if any doubt arise on the words of the enacting part, the preamble may be resorted to to explain it. Now, the general intention of the Legislature may be collected from the preamble, which recites “the pernicious practice of raising money by the sale of life-annuities,” and the body of the act is also confined to annuities granted in consideration of money or notes. By another clause, too, it is evident that the act does not extend to this case. The seventh section prohibits brokers taking more than 10*s.* for every 100*l.* actually *paid*. It is impossible to suppose that the Legislature intended to prohibit a broker receiving any premium for his trouble in negotiating such an annuity as the present, and yet his premium cannot be estimated according to the directions of that clause. With regard to the words in the excepting clause, “without regard to pecuniary consideration,” I think they were added to shew the sense in which the word “voluntary” was before added; and that the meaning of that part of the

Z 3

clause

Ch. V. l. 3.

clause is this, that any annuity granted for any other than a pecuniary consideration, shall, for the purposes of the act, be considered to be a *voluntary annuity*.

Grise J.—Though the preamble cannot control the enacting clause, we may compare it with the rest of the act, in order to collect the intention of the Legislature: and I think it is apparent, from the whole of this act, that it was not their intention to extend it to a case like the present. In cases where money has been paid as the consideration, the Courts order the money to be restored when they vacate the annuity deeds; but the business, the relinquishment of which was the consideration of the granting this annuity, we cannot order to be restored.—
Judgment for the plaintiff.

So an annuity granted in consideration of the grantee resigning his situation as master of an academy, in favour of the grantor, need not be registered under the Annuity Act, even though at the time of the grant, the grantee agrees to assign over to the grantor his household furniture, at an appraised

appraised value, and to lend a sum of money to the grantor, to be repaid with interest.

Ch. V. f. 3.

That was so decided in the case of *Hutton* against *Lewis, Clerk*, and others, where, by articles of agreement, dated in *January 1785*, between the plaintiff and the defendant, *Lewis*, the former, who was then master of an academy at *Deptford*, agreed to relinquish his situation in favour of the latter, to grant him a lease of the house, to assign him part of the household furniture and fixtures, at the appraised value, and (if it should not be convenient to *Lewis* to raise money sufficient for the value of the goods, &c.) to advance him 300*l.* on the latter finding security for the repayment, with interest; in consideration of which the defendant, *Lewis*, agreed to allow and pay to the plaintiff, his executors, &c. during the lives of the plaintiff and his wife, after the rate of one guinea per annum, for every scholar, and half the entrance-money paid on the admission of each scholar, by half-yearly payments; and if the plaintiff, or his wife after his decease, chose to determine that uncertain payment,

Hutton v.
Lewis, Tr. T.
34, G. 3, MSS.
5 Term Rep.
639. S. C.

Z 4

the

the defendant, *Lewis*, agreed to pay a clear annual sum of fifty guineas, by half-yearly payments, instead of the former. At the same time the three defendants gave the plaintiff a bond in 1200*l.* conditioned for the performance of the articles of agreement; and in Hilary Term, 1787, the plaintiff sued the defendants on the bond, who suffered judgment to go by default; and that judgment now stands as a security for the growing payments.

It was moved to have the annuity deeds delivered up to be cancelled, because the annuity was not registered, and attempted to distinguish this case from that of *Crespigny v. Wittenoom* (ante 335) by observing that there were other ingredients in the consideration of the present grant besides the relinquishing of the grantees situation in his academy, namely, the assigning of the household goods, and the conditional agreement for the subsequent loan of money by the grantee to the grantor. But

Lord *Kenyon* Ch. J. said,—This annuity was not granted in consideration of money paid

ag

paid t
ment
the pl
the A
out of
not a
the m
the gr
the co
ship a
tingui
tenoom
of tha
mean
ly app

G

the ac
siderat
does r
Rule

paid to the grantor ; and that the relinquishment of the academy, and the good-will of the plaintiff, was a consideration to which the Annuity Act did not extend, as it sprung out of the interests of the academy, and was not a price to be paid ; and as to the loan of the money, which was to be in the option of the grantor afterwards, that was no part of the consideration of the annuity. His Lordship also said, that this case could not be distinguished from the case of *Crespigny v. Witteoom* ; but, that even without the authority of that case, he had no doubt about the meaning of the act of parliament, which only applies to money considerations.

Grose J.—If this annuity were within the act, it would be void, because the consideration was not in money, but that statute does not extend to cases of this kind.—
Rule refused.

APPENDIX.

Of describing and setting forth the Consideration in the Memorial (a), ante 63, chap. 1, sect. 5.

THE first clause in the annuity act requiring that the consideration or *considerations* should be stated in the memorial, does not extend to cases where a mere nominal sum is stated in the deeds, but which in fact is not paid, and therefore cannot be considered as forming any part of the real consideration for the annuity. Neither is it necessary to state in the memorial, that the annuity is payable for the portion of time

(a) This case did not come to hand till the sheet where it ought to have been introduced was printed off, however it is properly inserted in the index.

from

from the last quarter day to the death of the annuitant.

As was decided in the case of *Ince* against *Everard*, where it appeared that 10s. was stated *Ince v. Everard*,
6 Term Rep.
545. in the indenture of assignment as a consideration paid by *Ince* to a trustee of a term securing the annuity, and an objection was taken, because that sum did not appear in the memorial, which was as follows, "Of a bond dated the 3d of August 1792, given by *Everard* to *Ince* in 56ol. for securing an annuity of 35*l.* during the joint lives of *Senior* and *Dawson*, and the survivor, payable quarterly.—Of a warrant of attorney to confess judgment on the bond.—And of an indenture of the same date, between *Everard* of the first part, *Ince* of the second part, and *Dawson* of the third part, whereby in consideration of 28ol. paid by *Everard* to *Ince* and also of 10s. paid by *Ince* to *Dawson*, *Everard* at the request and by the direction and appointment of *Ince*, assigned to *Dawson* and his executors certain premises at *Hackney*, for the remainder of a term of 62 years, then unexpired, in trust, in the first place, to secure to *Ince* the said annuity of 35*l.* and then in trust for *Everard*, his

Appendix.

his executors, &c. The memorial then proceeded thus; "And it is hereby declared that the said sum of 25*ol.* was really and *bonâ fide* paid by *Ince* to the said *Leonard Jones*, at the time of the execution of the deeds, &c." A rule had been obtained, calling on the plaintiff to shew cause why the annuity deeds should not be set aside, because there were two considerations for the deed of assignment, the 28*ol.* paid by *Everard* to *Ince*, and the 10*s.* paid by *Ince* to *Dawson*, whereas it was only averred in the memorial that the former was paid, and because the annuity was in fact granted not only for the lives of *Senior* and *Dawson*, and the survivor of them, but also for a proportional part of the quarter after the last quarter day to the day of the death of the survivor, which latter part was not stated in the memorial.

The Counsel who shewed cause against the rule said, that the sum of 10*s.* supposed to be paid to the trustee, was a mere nominal sum, in truth never paid in cases of this kind, and that it formed no part of the real consideration:

sideration: but if it were necessary that it should be paid under the annuity act, that it was stated in the former part of the memorial of the assignment that the sum of 10s. was paid, as well as the real consideration. And as to the other objection, that the parties were only bound by the annuity act to set forth the consideration of the annuity, and the annual sum to be paid; but that it was not necessary to state the days of payment in the memorial. On the other side it was insisted, that the annuity act required the consideration or considerations should be stated in the memorial, clearly adverting to a case where more than one consideration is paid for the annuity; and that therefore the consideration of 10s. should have been stated; and that the averment of the real consideration being paid, excluded the supposition of the payment of the other. That though the annuity act did not in express terms require that the payment of a fraction like the present should be set forth in the memorial, it did require that the terms of the contract should be stated with accuracy; that it was a material part of the contract

contract to state the proportionable payment, because it increased the price of the annuity. And in the case of *Sawyer v. Bunce*, which happened lately (*a*), the Court set aside the annuity deeds, because one part of the transaction was not set forth in the memorial, namely, that the annuity should be redeemable on repayment of the whole consideration.

(*a*) Ante 74,
MSS.

But Lord *Kenyon* Ch. J. said the objections were extremely trivial; and that it would be perfectly ridiculous to set out the 10s. consideration, which is like the reservation of a pepper-corn rent, and is in fact never paid: that that kind of consideration was in many cases inserted for no purpose whatever, though in others it is of importance, i. e. where an estate is in a trustee, and that consideration is inserted to make a deed valid as to him under the statute of uses. But in none of the memorials of deeds that are registered in *Middlesex* or *Yorkshire*, is the circumstance of the 10s. consideration, or of the pepper-corn rent reserved, taken notice of. And in answer to the other objection, his Lordship added,—“that it was sufficient to say that the Annuity Act does not require

Of a M

TH
fe
cal mist
the affig
mistake
true c

quire
insert
act o
done
to sup
tained
that th
the m
rence
transac
tion w
setting
charge

quire that the days of payment should be inserted in the memorial. That all that the act of parliament required to be done, was done in this case, and that they ought not to superadd other requisites to those contained in the statute. That act required that the transaction should be fairly stated in the memorial, to enable the public, by reference to the memorial, to see what that transaction was, and that here the transaction was fairly set forth. The rule for setting aside the annuity deeds was discharged.

Of a Mistake in the Memorial, as registered ante 156, chap. 1, sect. 7.

THE Court of King's Bench will not set aside annuity deeds for a mere clerical mistake in the memorial; as if, in stating the assignment of a term of years, there is a mistake in the figures, or if in reciting the true consideration, it mistakes the sum after-

Appendix.

afterwards in the averment of the payment of it.

Ince v. Everard,
6 Term Rep.
545.
(a) See the memorial ante 347.

Thus in the case of *Ince* against *Everard*, where it appeared in the memorial (a) that the assignment of a term of 61, was stated to be a term of 62 years; and also where the consideration was in the recital of it stated to be 280*l.* but afterwards was stated thus, "which said sum of 250*l.* was paid, &c." and upon these, amongst other, objections being taken, a rule was granted to shew cause why the annuity deeds should not be set aside. The Counsel who shewed cause argued, that the sum of 250*l.* evidently appeared to be a mistake, as well as the name of *Leonard Jones*, which arose from the clerk who drew up the memorial, being also employed to draw a memorial of another annuity at the same time, in which the name of *L. Jones*, and the sum of 250*l.* occurred; but that the real sum was correctly stated in the former part of the memorial: that it was not necessary to make an express averment of the payment of the consideration, as the payment appears in a former part by way of recital; and then the latter part may be rejected as sur-

surplusage; and that the other was a mere clerical mistake, and not a sufficient ground for setting aside the annuity. In support of the rule, the Counsel said, whether this happened by mistake or design is wholly immaterial; it is not the truth or falsehood of the case, which alone is sufficient reason for setting aside the annuity deeds.

But Lord *Kenyon* Ch. J. said, the objections were extremely trivial, and that the sum of 25*ol.* for 28*ol.* and the figures 62 instead of 61, were evidently clerical mistakes (a).—*Per Curiam.* Rule discharged.

(a) See the case
at length ante
347.

B
ent
me
A
4th
But a
fed, i
The con
cover

When n
the fir
The Ann
But now
shall in
it passe

A

TABLE

OF THE

PRINCIPAL MATTERS.

Action.

	<i>Page</i>
B EFORE any action is brought on any judgment already entered, or on any deed, &c. securing an annuity, a memorial must be enrolled — — — — —	9
A <i>scire facias</i> to revive a judgment is an action within the 4th section of the Annuity Act — — — — —	241
But a fine regularly levied, in which there is no intrinsic defect, is not an action within the act — — — — —	244
The consideration cannot be impeached in an action to recover it back after the annuity contract is rescinded — — — — —	220

Acts of Parliament.

When no commencement is provided in an act, it relates to the first day of the session on which it passed — — — — —	16
The Annuity Act 17 <i>Geo.</i> 3. c. 26, is one that does <i>ibid.</i>	
But now by 33 <i>Geo.</i> 3. c. 13, the Clerk of the Parliaments shall indorse on every act the day, month, and year, when it passed, and shall have received the royal assent, which shall	

A a 2

356 *A Table of the Principal Matters.*

shall be the date of its commencement when no other is
provided therein — — — — *Page 23 n.*

Advancement.

The act does not extend to any annuity given for the ad-
vancement of a child — — — — 14

Agent.

If the consideration is paid by an agent, his name ought to
be so set forth in the memorial — — — 80
If a person employs an agent to procure an annuity from or
for an infant, he is punishable by fine and imprisonment 12

Annuity.

The Annuity Act — — — — 7
An annuity is a distinct thing from a rent-charge, being
chargeable only on the person of the grantor — — 1
If a former annuity then given up makes a part of the con-
sideration for the grant of another annuity, it must be so
stated in the memorial — — — 104
Every annuity payable out of any interest arising from the
funds assigned for that purpose, must be registered; re-
gistering it as *one* annuity of the gross sum is assigned not
sufficient — — — — 312
Whether it is the grant of an annuity, or merely the pur-
chase of dividends in funds, depends entirely upon the
manner of negotiating the transaction — — 316
If the assignment of one annuity is a good consideration for
the grant of another, qu. ? — — — 195
All annuities purchased by or for infants are void, and any
person purchasing them, or procuring them, or prevailing
on infants to ratify a purchase when of age, is punishable
with fine and imprisonment — — — 12

Solicitors,

Solicitors, scriveners, &c. who shall take more than 10s. for 100 <i>l.</i> for procuring money for annuities, are punishable by fine and imprisonment — — — Page 287	
But the fees are not limited for the trouble in negotiating any annuity granted for any other than a pecuniary consideration — — — 299	
Voluntary annuities are held to be such as are granted for any other than a pecuniary consideration — — — <i>ibid.</i>	
Annuity Act 17 <i>Geo.</i> 3. c. 26, took effect from the first day of the session in which it passed — — — 16	
And extends to annuities granted before as well as after the act was passed — — — 68	
But it does not extend to any annuity given by will, or by marriage settlement, or for the advancement of a child, nor to any annuity secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or fee-tail in possession at the time of the grant, or secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity, nor to any voluntary annuity granted without regard to pecuniary consideration, nor to any annuity granted by any body corporate, or under any authority or trust created by act of parliament — — — 14	
Nor to any annuity where the sum to be paid does not exceed 10 <i>l.</i> annually, unless there be more than one such last-mentioned annuity from the same grantor to or in trust for the same person — — — 15	
The exception of annuities secured on lands, whereof the grantor is seised in fee-tail or fee simple, extends to an equitable as well as a legal estate — — — 302	
The Annuity Act is meant as a regulation for registering the grants of all life annuities, which do not fall within some of the exceptions there introduced; and it is not complied with by registering the assignment of any gross sum, as one annuity of such gross sum, if several annuities are payable out of it, but there must be a memorial of each — — — A a 3	

358 *A Table of the Principal Matters.*

each annuity payable out of it, otherwise they will be void	— — — — —	Page 313
A contract to give security for the grant of an annuity, although such contract be partly executed, is not considered in this respect as equal to the grant of it, and consequently not such a transaction as the Legislature meant to include in the act, therefore it is not necessary to register such contract in order to force a specific performance	— — — — —	324
The act extends to such annuities only as are granted in consideration of something actually paid, and the meaning of the clause which excepts voluntary annuities, is, that any annuity granted for any other than a pecuniary consideration, shall for the purposes of the act be considered to be a voluntary annuity	— — — — —	334
Upon this ground it was decided, that an annuity granted in consideration of the grantee's giving up a lucrative business in favour of the grantor, was not such an annuity as either the spirit or the words of the act required that it should be registered	— — — — —	334.
So an annuity granted in consideration of the grantee resigning his situation as Master of an Academy in favour of the grantor need not be registered, though there be also an agreement between the parties to lend money, and assign over some household goods	— — — — —	343

Application to the Courts.

The clause in the act relating to the application to the Courts in which any action is brought, &c. is confined to that section in which it is introduced, so that the benefit of applying by motion to the Court in which any action is brought, or judgment entered up when there is any defect in the memorial as registered, is not confined to the person by whom the annuity is made payable 230 & seq. But the person who has purchased the interest in any security which the grantor of the annuity had assigned to assure

assure the payment of it, is not intitled to apply, not being sufficiently interested — Page 232
 This motion must be made in the life-time of the parties 236
 And whilst they are in their senses, if one becomes a lunatic, and any time has elapsed since the grant, the Courts will not set aside the annuity on application — 238
 Although a party has been guilty of *laches* in not applying sooner, the Court cannot refuse to give him summary relief on his application — 235
 If it appears that the half-pay of a military officer has been assigned as the security for an annuity, the Courts on application will vacate the securities — — 359

Assignments.

The assignment of any sum out of which annuities are payable, is looked upon as the grant of so many annuities as are payable out of it, and each annuity must be registered: A memorial stating it as one annuity of the sum assigned, is not sufficient within the act — 311
 So the assignment of any part of an annuity already granted and enrolled, must be registered according to the requisites of the act, each assignment being in that respect considered as a fresh grant — — 36—322
 So the assignment of the whole of an existing annuity purchased before the act passed, must be registered before the assignee can take any step upon it, if such assignment exists when the memorial of the original deeds is enrolled — — 38—323
 But it is not necessary to register the assignment of an annuity already granted and enrolled according to the act, before the assignee can proceed against the grantor in case of any default in the payment of the annuity, as the act is complied with by registering a memorial of the original securities — — 44—324
 The pay of a military officer cannot legally be assigned as the

the security for an annuity, and if it is, the Court wherein there has been any proceedings will set it aside *Page 259*

Assurance.

Observations upon the Annuity Act relative to the contract and the assurance ———— 283
The Courts held the contract for the annuity void as well as the assurance ———— *ibid.*

Authority.

The act does not extend to any annuity under any authority created by act of parliament ———— 14

Bank Notes.

See NOTES.

Bank Notes are money within the Annuity Act, and if stated as money in the memorial, it is a good description of the consideration ———— 114
Because they have the credit and currency of money to all intents and purposes ———— 115 D.

Broker.

See FEES, PROCURERS INDICTMENT.

All brokers who shall ask, demand, accept, or receive, directly or indirectly, any sum of money, or any gratuity or reward, for the procuring or soliciting a loan, and for the brokerage of any money that shall be actually and *bonâ fide* advanced and paid as the price or consideration of any annuity over and above the sum of 10s. for every 100l. so actually advanced shall be deemed guilty of a misdemeanor; and being fully convicted, may be punished for every such offence by fine and imprisonment

14
And

And the person paying the money or gratuity, shall be deemed a competent witness to prove the same Page 96
The Legislature did not intend to prohibit a broker receiving any premium for his trouble in negotiating annuities granted for any other than pecuniary considerations, yet his premium cannot be estimated according to the directions of the seventh clause of the act — 299

Certificate.

The Clerk of the Enrolments shall grant a certificate of each memorial when required, and the fees are to be paid in like manner as they are for the enrolment of the memorial — — — 11
The form of a certificate — — — 282

Clerk of the Enrolments.

The Clerk of the Enrolments must specify upon the roll, the certain day, hour, and time on which each memorial is brought to the office — — — 11
He has no authority to cancel the memorial, though the annuity be repurchased or redeemed — — — 271

Consideration.

See DEEDS, MEMORIAL, MISTAKE.

The consideration for granting an annuity must be stated in the memorial — — — 8
And in the deeds in words at length, by whom and on whose behalf advanced — — — 9
And shall be in money only — — — *ibid.*
If any part of the consideration shall be returned, the Court in which any action is brought for payment of the annuity on judgment entered, may be applied to by motion to stay proceedings on the judgment or action, and the Court may order the deeds to be cancelled — — — 10
So

362 *A Table of the Principal Matters.*

So if the confideration is paid in goods	Page 10
Or retained on any pretence	<i>Ibid.</i> § 159 & <i>seq.</i>
What is fuch returning	159 & <i>seq.</i>
Or any of the notes are not paid when due, or if cancelled before they are paid	<i>Ibid.</i>
Every thing which forms any part of the confideration muft be fet forth in the memorial	63
But not fuch things as are looked upon nominal fums only, and are inferted in the deeds by way of form only	346
But if the confideration is ftated to be in money when it is in notes, it is not fufficient	64
The portion of time from the laft quarter-day to the death of the annuitant is not looked upon as a part of the confideration, and therefore fuch claufe need not be fet forth	346
The true confideration muft be fet forth in the memorial, as it was really and bona fide paid	68—71
And there is no difference in this refpect whether the annuity was granted, and the confideration was paid, before or after the Annuity Act paffed	68
It is not fufficient if the memorial contains the fame confideration as the deeds do, unlefs it is the real confideration	<i>Ibid.</i>
And if any part of the confideration be detained for the accruing payments of the annuity, and the memorial ftates the whole confideration to have been paid, it is not a fufficient defcription within the act	63
A claufe to redeem the annuity, is confidered as a part of the confideration of granting it	74
The memorial fhould contain an account of the whole proceedings relative to the confideration, to whom, and on whose behalf it was paid, the actual mode and manner in which it was paid, and the names of all the parties concerned in the payment of it	79
If the confideration is ftated to be in money paid at the time when it appears to have been previously lent, the securities will be fet afide	101
So if it was a debt due for goods fold previously	103

So if
So if
But b
Wh
be
fam
And
mem
But t
ther
oth
is fo
tion
Where
The c
am
The c
reci
If a d
tion
If the
the g
Where
64
gran
gran
to r
paid
The c
bein
of pa
pay
It is
the t
Where
jecti
The c

A Table of the Principal Matters. 363

So if it was a judgment recovered	Page 104
So if it was a former annuity then given up	<i>ibid.</i>
But bank-notes may be stated as money	<i>ibid.</i>
Where there are several deeds, the consideration need not be stated in each, if they constitute one assurance for the same annuity	118
And if stated in each deed, it need be stated but once in the memorial	<i>ibid.</i>
But though each deed need not state the consideration, there must be a reference from the memorial to each, otherwise those which omit it will be void, unless there is something to shew they all relate to the same transaction	123
Where money has been paid at different times, the gross amount may be stated as the consideration	107
The consideration may be stated in the memorial by way of recital	131
If a debt due for goods previously sold is a good consideration within the act, qu.?	189
If the assignment of one annuity is a good consideration for the grant of another, qu.?	190
Where the consideration was stated in the memorial to be 64 <i>l.</i> , 10 <i>s.</i> of which was paid in money at the time of granting the annuity, and the remaining part paid by the grantee, at the desire of the grantor, to another person, to redeem another annuity for which only 48 <i>o.</i> were paid; this was held a legal consideration	191
The consideration of each specific annuity, though there being two issuing from a fund assigned for the purpose of paying them, must be stated in separate memorials, if payable to different persons, though paid by the assignee	112
It is not necessary that the consideration should be paid at the time of the grant of the annuity	196
Where the consideration was a judgment recovered, no objection taken	199
The consideration may be recovered back from the grantor, if	

364 *A Table of the Principal Matters.*

- if the annuity deeds are set aside owing to a defective memorial ——— Page 206
- Though it be a debt due for goods previously sold *ibid.*
- Unless they are sold with a view to evade the Annuity Act *ibid.*
- But the consideration cannot be recovered back from the surety who receives no part of it ——— 207
- Courts of law will order the consideration money to be returned when the deeds are vacated ——— 219
- So if the annuity contract is rescinded the purchaser may recover back the money with interest ——— 220
- And the consideration cannot be impeached in such action 221
- But a Court of Equity has no power to provide for the debt raised by the consideration out of any arrears in their hands when they vacate the assignments of any annuity on account of their being improperly registered 223
- But application must be made to a Court of Law to establish the original contract, and effectuate the claims of the assignees ——— *ibid.*
- The Court in which any judgment is entered will examine into the consideration on which it is founded ——— 245
- And will set aside the annuity, either for want of a consideration, or on account of its being granted for an illegal one 261
- The fees are not limited for the trouble in negotiating any annuities granted for any other than a pecuniary consideration ——— 334
- The clauses excepting voluntary annuities is held to apply to such annuities only as are granted in consideration of something actually paid, and the meaning of it is, that any annuity granted for any other than a pecuniary consideration, shall, for the purposes of the act, be considered to be a voluntary annuity ——— *ibid.*
- Upon this ground it was decided that an annuity granted in consideration of the grantee's giving up a lucrative business in favour of the grantor was not such an annuity as either the spirit or the words of the act required that it should be registered. ——— *ibid.*
- Contracts.

All e
pet
of
If an
ma
Obse
an
If the
is v
A co
the
as e
tra
the
con
per
The li
cert
i. e.
afte
A Cou
wh
But if
such
of L
their

Contracts.

All contracts for annuities with infants are void, and any person procuring an infant to ratify such contract when of age, is punishable with fine and imprisonment *Page 12*
 If an annuity contract is rescinded, the consideration money may be recovered back with interest — 210
 Observations upon the Annuity Act relative to the contract and assurance — — — 385
 If the deeds securing the annuity are vacated, the contract is void, as well as the deeds — — — *ibid.*
 A contract to give security for the grant of an annuity, although partly executed is not considered in this respect as equal to the grant of it, and consequently not such a transaction as the Legistature meant to include in the act; therefore it is not necessary that a memorial of such contract should be enrolled in order to compel a specific performance of it — — — 329

Copy.

The like fees are to be paid for each copy of a memorial or certificate as are paid when the memorial is first enrolled, *i. e.* one shilling, unless it exceed 200 words, and if so, after the rate of six-pence for each 100 words — 11

Courts,

See MOTION.

A Court of Law will order the consideration to be returned when the annuity deeds are vacated — 219
 But if they are vacated by a Court of Equity they have no such power, therefore the parties must apply to a Court of Law to establish their original contract and effectuate their claims — — — 224
 The — — —

The Courts in which any judgment is entered up have an equitable jurisdiction and control over such judgment, and on application will examine into the consideration in which it was founded — — Page 141

Date.

The date of every instrument by which an annuity is granted must be inserted in the memorial — — 50
 It has been said if there are several deeds, those only are void which omit the date — — 51
 But see *contra*, where the omission of the date of two of the deeds was held to vitiate the whole transaction 53—56

Debt.

If a previous debt makes a part of the consideration it must be so stated in the memorial — — 103
 And that debt may be referred to if the annuity deeds are set aside on account of a defect in the memorial 203
 Though it was for goods sold, if it was not a contract done with a view to evade the Annuity Act — — *ibid.*

Deeds,

See CONSIDERATION, MEMORIAL, MISTAKE.

All deeds for granting of annuities shall contain the consideration fully and truly, and the names of the parties in words at length, otherwise they will be void — — 9
 And must be registered within 20 days, exclusive of the day of execution — — 7—8—69
 All manner of instruments calculated to secure the payment of an annuity must be registered — — 24
 A warrant of attorney to confess a judgment on the annuity bond is a deed within the act and must be registered 25—27

A collateral

A Table of the Principal Matters. 367

A collateral security given by a third person, as well as those deeds given by the grantor himself, must be registered	Page 33
But a judgment entered is not, unless it is the only security	48
Neither if an annuity is granted by one deed, and there is a demise subject to that annuity by a separate deed, is it necessary to register the latter, because that is not a deed by which an annuity is granted	36
Where there are several deeds a defect in one does not vitiate the others	51
But see <i>contra</i> , and this decision impeached	53—56
It is not sufficient that the deeds and memorial contain the same consideration, unless it is the true one as bona fide paid	638
Where there are several deeds the consideration need not be stated in each if they constitute one assurance for the same annuity	118
And if stated in each deed it need be stated but once in the memorial	<i>ibid.</i>
But where there are several deeds there must be a reference to each in the memorial to shew they all relate to the same annuity, otherwise the deed which omits the consideration will be void	123
And it must be inferred from the memorial itself that all the deeds are connected	<i>ibid.</i>
The deeds are absolutely void and not merely voidable if there is any defect in registering the memorial	172
If all the deeds given to secure an annuity must be set aside merely because one only is not properly registered, qu.?	57
And a person not a party to the transaction may take advantage of such defect	<i>ibid.</i> & seq.
Observations upon the Annuity Act relative to the contract and the assurance	164
The deed by which any annuity is assigned must be registered before the assignee can take any step against the grantor if that deed exists at the time of the enrolment of the original deeds	38
But	

368 *A Table of the Principal Matters.*

But it is not necessary to register the deed of assignment of an annuity already granted and properly enrolled before the assignee can proceed against the grantor in case of any default in the payment of the annuity, as the act is complied with by registering a memorial of the original securities — — — — —

Page 44.

Disclosure.

The memorial ought to contain an account of the whole of the proceedings relating to the annuity, so that upon reading it, a full, clear, and true disclosure of the transaction may appear — — — — —

83

Enrolment,

See MEMORIAL.

Of the enrolment of the memorial, and herein what it should contain — — — — — 7
 Directions relating to the enrolment of the memorial, and the clerk's fees thereon — — — — — 262
 A table of the days on which there is no business done at the Enrolment Office — — — — — 273

Equity.

Where parts of a rent-charge have been assigned, and a Court of Equity is applied to, to know whether the assignments are legal, if such assignments are set aside on account of any defect in registering the memorials, that Court has no power to provide for the debt raised by the considerations out of any of the arrears of the rent-charge paid into their hands, but the original contracts must be established, and the claims of the annuitants effecteduated in a Court of Law, before they will be entitled to receive back their purchase-money — — — — —

224

The

A Table of the Principal Matters. 369

The exception in the act, of annuities secured upon lands of equal or greater annual value extends to an equitable as well as a legal estate — Page 302

Estates.

The exception extending to lands of equal or greater annual value, whereof the grantor is seised in fee-simple or fee-tail, extends to an equitable as well as a legal estate 302

The word seisin will extend to being seised of an estate in equity as well as in law — 311

Evidence,

See INDICTMENT.

Excepted Cases,

See ANNUITY.

Annuities given by will, or by marriage-settlement, or for the advancement of a child — 14

So also those annuities are excepted which are secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or fee-tail in possession at the time of the grant — *ibid.*

This exception is held to extend to an equitable as well as a legal estate — 302

So also such annuities are excepted as are secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity — 14

So also voluntary annuities granted without regard to pecuniary consideration — 334

So also annuities granted to any body-corporate, or under any authority or trust created by act of parliament — 14

B b So

370 *A Table of the Principal Matters.*

So also those annuities where the sum to be paid does not exceed *vol.* annually, unless there be more than one such last mentioned annuity from the same grantor or grantors, to or in trust for the same person — *Page 14*

The words in the act excepting voluntary annuities have been held to apply to such annuities only as are granted in consideration of something actually paid, and the meaning of that clause is, that any annuity granted for any other than a pecuniary consideration, shall, for the purposes of the act, be considered to be a voluntary annuity — — — — — 334

Upon this ground it was decided, that an annuity granted in consideration of the grantee's giving up a lucrative business in favour of the grantor, was not such an annuity as either the spirit or the words of the act required that it should be registered — — — — — 335

Or an annuity granted in consideration of resigning a situation — — — — — 343
Nor does it extend to any but money transactions *ibid.*

Execution.

Before any execution shall be sued out on any judgment already entered, a memorial of the deed, bond, instrument, or other assurance, shall be enrolled in the High Court of Chancery — — — — — 9

And in case the party shall neglect to enrol the same, any such execution shall be null and void — — — — — *ibid.*

The clause requiring the annuity deeds, &c. to be enrolled within twenty days of the execution, means within twenty days *exclusive* of the day on which the deeds are executed — — — — — 50

Fees.

Fees,

See BROKER.

There shall be paid for the enrolment of every memorial the sum of 1*s.* in case the same does not exceed 200 words, and if it does, then after the rate of 6*d.* for every 100 words, and the like fees for every certificate and copy given, and the fee of 1*s.* for every search in the office

	Page 11
Solicitors, scriveners, &c. who shall take more than 10 <i>s.</i> for 100 <i>l.</i> for procuring money for annuities, shall be punished by fine and imprisonment	13
But the fees are not limited for the trouble of negotiating an annuity granted for any other than a pecuniary consideration	299
The solicitor is not entitled to any commission-fee on putting out his own money	298

Fee-simple and fee-tail.

The act does not extend to any annuity secured upon lands of equal or greater annual value, whereof the grantor was seised in fee-simple or fee-tail in possession at the time of the grant

14

Fine.

A fine regularly levied without any intrinsic defect, is not an action within the annuity act

244

Forms of memorials.

Of an annuity secured by bond and warrant of attorney to confess judgment

274.

Of

B b 2

372 *A Table of the Principal Matters.*

Of an annuity or rent-charge by indenture, subject to redemption	Page 276
Of an annuity or rent-charge secured by deed, bond and warrant of attorney, and judgment signed	278

Funds.

The act does not extend to any annuity secured by the actual transfer of stock in any of the public funds, the dividends whereof are of greater or equal annual value than the said annuity	14
---	----

Goods.

If the consideration, or any part of it is paid in goods, the Court in which judgment is entered up, on any action brought, on application may vacate the securities	10
If the consideration is made up of a debt due for goods previously sold, it must be so stated in the memorial	103
Qu.? If it is a good consideration within the act	189
Such consideration may be recovered back if the deeds are set aside, provided the transaction is fair, and not entered into with a view to evade the annuity act	200

Grants.

The assignment of the interest arising from particular funds, to pay several annuities, is looked upon as the grant of an annuity within the act, and each annuity payable out of it must be registered	312
It depends upon the intention of the parties at the time of contracting, whether it is the purchase of that interest or the grant of an annuity	<i>ibid.</i>
The assignment of any part of an annuity is in respect to the necessity of its being registered, looked upon as a new grant	322
But	

But a contract for an annuity, although partly executed, is not in that respect equal to a grant of it, and consequently need not be registered — Page 327

Holidays.

A table of the days on which there is no business done at the Enrolment Office, and of the hours it is open on such days as business is done there — 273

Indictment,

See FEES.

The form of an indictment against a broker, for receiving more than 10s. per cent. for procuring money to be advanced on a life annuity — 289
What evidence will support such indictment — 291

Infants.

All contracts for the purchase of annuities with infants to be void — 11
Any person procuring an infant to grant an annuity, or to ratify any annuity when of age, shall be punished with fine and imprisonment — *ibid.*

Instrument.

A warrant of attorney is an instrument within the meaning of the act — 25
So are all manner of instrument calculated to secure annuities — 24
Even though given by a third person — 33
But a judgment, although entered before the memorial is enrolled, is not — 48

B b 3

Interests.

Interests.

The memorial must state the interests of all the parties mentioned in any of the deeds securing it, otherwise the transaction will be void — Page 138

Judgment.

Before any judgment shall be entered of record upon any warrant of attorney for recovering, or securing the payment of any annuity already granted, and before any action shall be brought on any such judgment, a memorial of the deeds, &c. shall be enrolled in Chancery, otherwise such judgment shall be void — 8

A judgment entered need not be registered, unless it is the only security for an annuity — 48

If a judgment recovered makes a part of the consideration, it must be so stated in the memorial; stating it as so much money is not a sufficient description — 104

If the memorial states the judgment to be entered in a different Court from what it is, the mistake is fatal — 156

The Court in which any judgment is entered, will examine into the consideration on which it is founded 245 *seq.*

A warrant of attorney given to confess a judgment in any Court, gives that Court a summary jurisdiction to interfere in any transaction relating to such warrant, before any judgment is actually entered up thereon — 248

Jurisdiction.

The Court in which any judgment is entered up has an equitable jurisdiction over such judgment, and on application will examine into the consideration on which it is founded — 245

So

A Table of the Principal Matters. 375

So a warrant of attorney gives that Court in which it is to
 confers judgment, a summary jurisdiction to interfere in
 any transaction relating to such warrant, before any judg-
 ment is entered up thereon — Page 248

The jurisdiction of the Courts does not extend to ordering a
 bond to be delivered up — 250

Nor any other instrument void by the Annuity Act 251

A fine levied does not give the Court of Common Pleas any
 jurisdiction to interfere, unless there is a defect in the
 mode of levying it — *ibid.*

If any transaction relating to an annuity has been before a
 Court of competent jurisdiction, the Court of King's
 Bench will not suffer that point to be stirred again 255

And wherever a Court has any jurisdiction to interfere, they
 will avoid the annuity, either for the want of, or if an il-
 legal consideration was given for it — 261

Laches.

Although a party has been guilty of *laches* in not applying
 to the Court for a summary relief till a long time after he
 knew there was a defect in the memorial, the Court can-
 not refuse the application, as the statute declares the pro-
 ceeding void — — — 235

Lands.

The exception in the act of such annuities as are secured
 on lands of equal or greater annual value, whereof the
 grantor is seised in fee-simple or fee-tail, extends to an
 equitable as well as a legal estate — — 302

Marriage Settlement.

The act does not extend to any annuity given by marriage-
 settlement — — — 14

B b 4 Memorial,

Memorial.

See CONSIDERATION, ANNUITY.

A memorial of all deeds, bonds, &c. for granting life annuities, shall within 20 days of the execution thereof, be enrolled in the Court of Chancery; which shall contain the day and year when the deeds, &c. bear date, the names of all the parties, and for whom any of them are trustees, and of all the witnesses; and shall set forth the annual sum to be paid, and the name of the person for whose life it is granted, and the consideration for granting it, otherwise the deeds, &c. shall be void

Page 7—8

A memorial must be enrolled before judgment shall be entered, &c. record upon any warrant of attorney for recovering any annuity already granted, and before execution, shall be sued out, &c. on any judgment already

241

If the 20 days are elapsed, within 20 days of the execution of the annuity deeds, exclusive of the day on which they are executed

69

If the 20 days are elapsed, neither Courts of Law or Equity can relieve

63

Every thing which forms any part of the consideration must be set forth in the memorial

63

The memorial must contain the true consideration as *bonâ fide* paid

68—71

And there is no difference in this respect, whether the annuity was granted, and the consideration was paid *before* or *after* the Annuity Act passed

68

And it is not sufficient if the memorial contains the same consideration as the deeds do, unless it is the true consideration as really paid

68

The memorial should contain an account of the whole proceedings relative to the consideration, to whom and on

whole

A Table of the Principal Matters. 377

whose behalf it was paid, and the names of all the parties concerned in the payment of it	Page 79
The memorial must state the precise manner in which the consideration was paid	101
Where there are several deeds, though each contain the consideration, it need be stated but once in the memorial	112
Bank notes may be stated as money in the memorial	111
Where there are several deeds securing the same annuity, each need not state the consideration, but there must be such a reference to each deed from the memorial, as to shew they relate to the same transaction	123
Where a gross sum is assigned for the payment of several annuities, it is not sufficient to describe it in the memorial as one annuity of such gross sum, as each annuity payable out of it must be registered	312
The consideration may be stated in the memorial by way of recital	131
If any mistake appears in the memorial registered, the Court wherein any action is brought will set aside the securities for the annuity	155
If the memorial is defective, the securities are not merely voidable, but absolutely void	172
And a person who is not a party may take advantage of such defect	<i>ibid.</i> 172 <i>seq.</i>
Directions relating to the enrolment of the memorial, and the clerk's fees thereon	11—362
An Epitome of the Practice relative to the enrolment of the memorial	363
Forms of different memorials—fee forms	274

Mistake.

If there is any mistake in the memorial registered, the Court in which any action is brought will set aside the securities for the annuity	156
But not unless it is material	157
As clerical mistakes are not sufficient to vacate the deeds	351
Money.	

Money.

See PROCURER, BROKER.

The consideration must be in money only — Page 9
 If notes are stated as money in the memorial, it is not a
 proper description within the act — 61
 Money is mentioned in the act as contradicting qualified from
 goods — — — — — 189
 Bank notes may be stated as money in the memorial, and
 the description held good — — — 114
 It is not necessary that the money should be actually told
 down at the time of the grant of an annuity, provided the
 grantee pays a valuable consideration for the annuity,
 and the grantor receives it, though not immediately from
 him — — — — — 196

Mortgage.

The Courts may be applied to by motion to cancel the
 deeds, if any part of the consideration is returned, or
 notes not paid when due, or if the consideration is paid
 in goods, or any part of it is retained — — 10
 The clause relating to such application is confined to the
 particular section into which it is introduced — 231
 So that the benefit of applying by motion to the Court in
 which any action is brought, or judgment entered, is not
 confined to the person by whom the annuity is made pay-
 able — — — — — 231
 The Court cannot refuse this application, though the party
 has been guilty of *laches* in not applying sooner 235
 The Court can go no further than the application before
 them, yet where their own process is made the means of a
 conveyance, they can take notice of it upon motion 250

Names.

Names.

The memorial should contain the names of all the parties, <i>Page</i> 8	
And also the name or names of the person or persons by whom and on whose behalf the consideration, or any part thereof shall be advanced, shall be fully and truly set forth in the memorial, in words at length ——— 9	
So the names of all the persons concerned in the payment of the consideration should be stated in the memorial 19	
And it is not matter of surplusage in the act to set forth the names of two persons, where two are concerned in the payment ——— 166	
But if the christian names appear in any part of the securities it is sufficient, though they are not at full length in the memorial ——— 167	

Notes.

See BANK NOTES.

In case the consideration, or any part of it, is paid in notes, if any of the notes, with the privy and consent of the person paying them, are not paid when due, or shall be destroyed without being first paid, application may be made to the Court in which any judgment is entered, or action brought to cancel the deeds securing the annuity 10	
If notes are stated as money in the memorial, it is not a sufficient description within the act ——— 61	
The notes should be accurately set forth ——— <i>ibid.</i>	
But bank notes may be stated as money in the memorial, and the description will be good ——— 114	

Observations.

Observations on the Annuity Act relative to the contract and the assurance ——— 285	
The contract is void as well as the assurance, when the annuity is set aside for any defect in registering a memorial Office. 286	

Office.

Every memorial shall be duly enrolled in the order of time
as the same shall be brought to the office *Page 11*
The fee of one shilling to be paid for every search in the
office ——— *ibid.*
A table of the days on which there is no business done at the
enrolment office; and of the hours it is open on such
days as business is done there ——— 273

Officer.

The pay of a military officer cannot legally be assigned before it is due, as the security for an annuity; and if it appears to be so assigned, the Courts on application will order the annuity deeds to be delivered up to be cancelled 259

Pay.

The pay of a military officer cannot be legally assigned before it is due, as the security for an annuity; and if it appears to have been so assigned, the Courts on application will order the annuity deeds to be delivered up to be cancelled ——— *ibid.*

Practice.

An Epitome of the Practice relative to the enrolment of
memorials ——— 263
Practical directions ——— *ibid. & seq.*
Forms of memorials ——— 274
Form of a certificate ——— 282

Process.

Where their own process is made the means of a conveyance, the Courts can take notice of it upon motion *248*
Procurers.

Procurers.

Any person procuring any money for the purchase of any annuity with an infant, punishable by fine and imprisonment — — — — — *Page 12*

Procurers who shall take more than 10s. for every 100*l.* for procuring money for annuities, shall be punishable by fine and imprisonment, and the person paying shall be deemed a competent witness — — — — — *14*

But the fees are not limited for the trouble of negotiating an annuity which is granted for any other than a pecuniary consideration — — — — — *299*

Receipt.

A Court of Equity distinguishes between the persons who join in a receipt, and him who actually receives the same; and a receipt is not conclusive evidence against persons issuing it — — — — — *216*

Recital.

The consideration may be stated in the memorial by way of recital, without any averment of the facts — — — — — *131*

Redemption.

Where a tenant in fee of the equity of redemption of his estates, who had conveyed them in trust to pay off the mortgage, and all debts charged upon or being a lien upon them, granted an annuity, secured upon them by a bond and judgment, and the grantee brought in the judgment debt as a claim provided for by the trust deed, which was rejected, on account of the securities for the annuity

annuity

382 *A Table of the Principal Matters.*

annuity not being enrolled according to the directions of the act, the Court of Chancery held, that an estate in equity in fee-simple or fee-tail was, as to the necessity of an annuity secured upon it being enrolled, the same as if it was a legal estate, and therefore that the claim ought to have been admitted ——— Page 302

If there is a clause of redemption in the annuity deeds, and it is considered as a part of the consideration, it must be inserted in the memorial ——— 74

Relation.

Acts of Parliament, if there is no specific day for their commencement, relate to the first day of the session in which the act passes ——— 16

But now vide 33 Geo. 3. c. 13. ——— 23 n.

Rent-Charge,

Is a distinct thing from an annuity, being a burden imposed upon and issuing out of lands ——— 1

Where parts of a rent-charge have been assigned, and the assignments are set aside by a Court of Equity on account of their being improperly registered, the parties must apply to a Court of Law to recover back their purchase-money ——— 223

Retainer.

If any part of the consideration is retained on pretence of answering the future payments of the annuity, or on any other pretence, it shall and may be lawful for the person by whom the annuity is made payable to apply by motion to the Court in which any action is brought for the payment of the annuity, to stay proceedings ——— 10

Where the consideration was stated in the memorial to have been

been paid, and it appeared that part had been retained for the accruing annuity, the transaction was held void Page 162
For what is considered as retaining on a pretence within the act, see ——— *ibid.* § seq.

Returning.

What is considered as returning the consideration to the person advancing it ——— 159

Roll.

The Clerk of the Enrolments shall keep a particular roll, on which memorials shall be entered, and shall specify in such roll the certain hour, day, and time on which such memorial is brought to the office ——— 11

Scire Facias.

A *scire facias* is an action within the meaning of the fourth clause of the Annuity Act ——— 241

Security.

See DEEDS.

Every instrument calculated to secure or grant an annuity must be registered ——— 24
Though it be only a collateral bond from a third person A warrant of attorney is a security for an annuity within the act, and must be enrolled ——— 25
But a judgment entered up is not ——— 48
Unless it is the only security ——— *ibid.*
The securities are absolutely void, and not merely voidable, for any defect in the memorial ——— 171 § seq.
The contract is void as well as the securities, if there is any defect in the memorial ——— 285
The

The pay of a military officer cannot legally be assigned as the security for an annuity; and if it appears to have been so assigned, the Courts on application will order the securities to be delivered up to be cancelled

Page 259

Scribblers.

Scribblers who shall take more than 10s. for 100l. for procuring money for annuities, shall be punished by fine and imprisonment, and the person paying is a competent witness

13

Solicitors.

Solicitors who shall take more than 10s. for 100l. for procuring money for annuities, shall be punished by fine and imprisonment, and the person paying is a competent witness

13

Statutes.

When no commencement is provided in an act, it relates to the first day of the session in which it passed — 23
 The Annuity Act, 17 G. 3, c. 26, is one that does so *ibid.*
 But now by 33 G. 3, c. 13, the Clerk of the Parliament shall indorse on every act the day, month, and year, when it passed, and shall have received the royal assent, which shall be the date of its commencement, when no other is provided therein — 23 n.

Surety.

The surety for the grantor cannot be obliged to re-pay the grantee any part of the consideration-money when the annuity deeds are vacated, if he receives no part of it, although he joins with him in giving a receipt for it 207
 The bond of a surety must be registered — 33
 Tender.

Tender.

Bank-notes a good tender, unless specially objected to on that account — — — Page 116

Transfer of Stock.

The act does not extend to any annuity secured by the actual transfer of stock in any of the public funds, the dividends whereof are of equal or greater annual value than the said annuity — — — 14

Trusts and Trustees.

The act does not extend to any annuity granted under any trust created by act of parliament — — 15
Nor to any annuity which does not exceed 10*l.* unless there are more than one such in trust for the same person *ibid.*
The names of all the trustees, and for whom they are trustees, must be stated in the memorial — — 8
The trusts in each deed securing the annuity must be stated, or the transaction will be void — — 133
That is, all the trusts created in consequence of the annuity 143
And those must be accurately specified — — 146

Void and Voidable.

It is fully settled, that unless a memorial of every annuity is properly registered, the securities are not merely voidable, but absolutely void — — — 171

Cc Voluntary

Voluntary Annuities.

See ANNUITY.

The act does not extend to voluntary annuities, which for the purposes of the act are held to be such as are granted for any other than a pecuniary consideration *Page* 334
 Upon this ground it was decided, that an annuity granted in consideration of the grantee's giving up a lucrative business in favour of the grantor, was not such an annuity as either the spirit or the words of the act required that it should be registered ——— *ibid.*
 Neither is resigning a situation in an academy in consideration of an annuity within the act ——— 343
 The seventh section of the act, which prohibits persons who procure money for annuities taking more than 10s. for every 100l. actually paid, extends to such annuities only as are granted for pecuniary considerations, and does not apply to voluntary annuities ——— 299

Warrant of Attorney.

Before action brought on any judgment entered of record upon a warrant of attorney, a memorial must be enrolled ——— 8
 A warrant of attorney to confess a judgment on an annuity had, is a deed within the act, and must be registered 25
 A warrant of attorney need not express the consideration, if it is stated in any part of the assurance ——— 118
 A warrant of attorney given to confess a judgment in any Court, gives that Court a summary jurisdiction to interfere in any transaction relating to such warrant before any judgment has been actually entered up 248 *seq.*
 Will.

Will.

The act does not extend to any annuity given by will Page 14

Witnesses.

The names of all the witnesses must be stated in the memorial ——— 8

The person paying any sum of money to the procurer of any annuity, is a competent witness against the procurer, if he is charged with taking more than 10*l.* for every 100*l.* ——— 14

And the witnesses must be set forth as attesting the specific deed; stating them generally as witnesses is not sufficient, if there are different witnesses to the different deeds ——— 168

FINIS.



